

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) MAY 20, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 32
 DEFENDANT.)
) PAGES 6158 - 6417

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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24 ADMINISTRATION
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1 SAN JOSE, CALIFORNIA

MAY 20, 2022

2 P R O C E E D I N G S

09:38AM 3 (COURT CONVENED AT 9:38 A.M.)

09:38AM 4 (JURY IN AT 9:38 A.M.)

09:38AM 5 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

09:38AM 6 THANK YOU AGAIN FOR YOUR COURTESY.

09:38AM 7 LET'S GO ON THE RECORD IN THE BALWANI MATTER. ALL COUNSEL
09:38AM 8 ARE PRESENT. MR. BALWANI IS PRESENT.

09:38AM 9 OUR JURY IS PRESENT SAVE FOR JUROR NUMBER 2.

09:38AM 10 LADIES AND GENTLEMEN, BEFORE WE START, LET ME ASK YOU THAT
09:38AM 11 QUESTION THAT I POSE TO YOU.

09:38AM 12 DURING THE BREAK SINCE WE HAVE LAST SEEN YOU, HAVE ANY OF
09:38AM 13 YOU HAD CAUSE, OCCASION, TO LEARN ANYTHING, DISCUSS, READ OR
09:39AM 14 OTHERWISE DISCOVER ANYTHING ABOUT THIS CASE? IF SO, WOULD YOU
09:39AM 15 PLEASE RAISE YOUR HAND.

09:39AM 16 I SEE NO HANDS. THANK YOU AGAIN FOR THAT.

09:39AM 17 LADIES AND GENTLEMEN, I DO WANT TO INFORM YOU OF
09:39AM 18 SOMETHING. IT APPEARS THAT YOU -- AT YOUR TIME HERE IN COURT
09:39AM 19 PREVIOUSLY, YOU MAY HAVE BEEN EXPOSED TO AN INDIVIDUAL WHO
09:39AM 20 TESTED POSITIVE FOR COVID LAST NIGHT.

09:39AM 21 NOW, FIRST OF ALL, LET ME ASK, IS ANYONE HERE FEELING
09:39AM 22 SYMPTOMATIC? ANY OF OUR JURORS FEELING ANY SYMPTOMS?

09:39AM 23 AND WHEN I SAY "SYMPTOMATIC," I THINK THAT'S IN THE COMMON
09:40AM 24 CULTURE AND KNOWLEDGE NOW, RUNNING FEVERISH, COUGH, ANYTHING
09:40AM 25 LIKE THAT THAT WOULD GIVE IN ANY WAY AN INDICATION THAT YOU

09:40AM 1 MIGHT BE OTHER THAN WELL.

09:40AM 2 IF SO, WOULD YOU PLEASE RAISE YOUR HAND.

09:40AM 3 I SEE NO HANDS.

09:40AM 4 THANK YOU, LADIES AND GENTLEMEN.

09:40AM 5 I'VE DISCUSSED WITH COUNSEL THIS SITUATION. AND WE HAVE,
09:40AM 6 OF COURSE, TURNED TO THE CDC GUIDELINES THAT DO GIVE US, ALL OF
09:40AM 7 US, INSTRUCTION ON PRECAUTIONS WE SHOULD TAKE AND ALSO
09:40AM 8 PROTOCOLS WE SHOULD FOLLOW IN REGARDS TO THESE SITUATIONS.

09:40AM 9 AFTER LOOKING AT THE PROTOCOLS AND DISCUSSING THIS WITH
09:40AM 10 COUNSEL, IT DOES APPEAR THAT WE CAN PROCEED WITH OUR TRIAL
09:40AM 11 TODAY BASED ON THE TIMING.

09:40AM 12 AGAIN, AS I SAID, THE POSITIVE TEST WAS LAST NIGHT. AND
09:40AM 13 THE GUIDELINES DO ALLOW US THEN AND DO INDICATE THAT WE COULD
09:40AM 14 PROCEED WITHOUT ANYTHING FURTHER THIS MORNING.

09:41AM 15 THAT'S WHAT I INTEND TO DO AFTER DISCUSSING THIS WITH
09:41AM 16 COUNSEL. THAT'S WHAT WE WOULD LIKE TO DO.

09:41AM 17 IN THAT VEIN THEN, WHAT I WILL DO AT THIS TIME, IS I AM
09:41AM 18 GOING TO EXCUSE JUROR NUMBER 2. JUROR NUMBER 2 WILL BE
09:41AM 19 EXCUSED.

09:41AM 20 ANY OBJECTION TO THAT, COUNSEL?

09:41AM 21 MR. SCHENK: NO, YOUR HONOR.

09:41AM 22 MR. COOPERSMITH: NO, YOUR HONOR. I DEFER TO THE
09:41AM 23 COURT.

09:41AM 24 THE COURT: ALL RIGHT. AND THAT MEANS THAT OUR NEXT
09:41AM 25 ALTERNATE, WHO IS ALTERNATE NUMBER 3, ALTERNATE NUMBER 3 WILL

09:41AM 1 BE MOVED TO REPLACE JUROR NUMBER 2 IN THE 12 JURORS SEATED. SO
09:41AM 2 WE'LL MAKE THAT CHANGE NOW.

09:41AM 3 I ALSO WANT YOU TO KNOW, LADIES AND GENTLEMEN, THAT WE ARE
09:41AM 4 GOING TO PROVIDE YOU -- FIRST OF ALL, EACH OF YOU WILL GET A
09:41AM 5 COPY. I'VE MADE COPIES, MY COURTROOM DEPUTY HAS MADE COPIES OF
09:41AM 6 THE CDC GUIDELINES FOR YOU, AND WE'LL GIVE YOU -- SHE'LL
09:41AM 7 PROVIDE A HARD COPY FOR YOU SOME TIME LATER TODAY FOR YOUR
09:41AM 8 REVIEW.

09:42AM 9 WE'RE ALSO GOING TO GIVE YOU TESTS, AND WE'LL SUPPLY YOU
09:42AM 10 AT THE END OF THE DAY, TESTS THAT -- TAKE-HOME TESTS THAT YOU
09:42AM 11 CAN TAKE.

09:42AM 12 PLEASE RECALL THAT AFTER TODAY OUR NEXT SESSION TOGETHER
09:42AM 13 WILL BE A WEEK FROM TODAY, FRIDAY. AND WHAT I'M GOING TO ASK
09:42AM 14 YOU TO DO IS DURING THE NEXT WEEK, IF YOU COULD, PERHAPS
09:42AM 15 MID-WEEK OR LATER, PERHAPS WEDNESDAY OR THURSDAY, IF YOU COULD
09:42AM 16 JUST CONTACT MY COURTROOM DEPUTY AND JUST GIVE HER ANY UPDATES
09:42AM 17 ABOUT YOUR HEALTH OR ANY CHANGE IN YOUR HEALTH CONDITION, THAT
09:42AM 18 WOULD BE HELPFUL FOR US.

09:42AM 19 OR IN THE INTERIM, IF ANYTHING DEVELOPS WITH YOU, PLEASE
09:42AM 20 LET US KNOW AND KEEP US INFORMED ABOUT THAT.

09:42AM 21 SO WE'LL PROCEED TODAY. AFTER DISCUSSING WITH COUNSEL,
09:42AM 22 WE'RE GOING TO FINISH WITH MR. GROSSMAN'S TESTIMONY THIS
09:42AM 23 MORNING. HE'S ON CROSS-EXAMINATION. THERE MAY BE REDIRECT.

09:43AM 24 AND THEN WE'LL FOLLOW TO SEE IF THERE'S ANY OTHER
09:43AM 25 WITNESSES THAT THE GOVERNMENT HAS. IT MAY BE THAT IF THEY

09:43AM 1 REST, THEN WE'LL MOVE INTO THE DEFENSE CASE, IF THERE IS ONE.

09:43AM 2 I SHOULD TELL YOU, ALL OF THIS MEANS THAT WE'LL PROBABLY

09:43AM 3 BREAK BEFORE 4:00 O'CLOCK TODAY. THAT'S MY SENSE OF IT.

09:43AM 4 (SNEEZE.)

09:43AM 5 (LAUGHTER.)

09:43AM 6 THE COURT: YOU KNOW, I SHOULD TELL YOU, IN THE

09:43AM 7 COURTROOM, TIMING IS EVERYTHING. GOD BLESS.

09:43AM 8 (LAUGHTER.)

09:43AM 9 THE COURT: ALL RIGHT.

09:43AM 10 COUNSEL, ANYTHING FURTHER BEFORE WE --

09:43AM 11 MR. SCHENK: NO. THANK YOU.

09:43AM 12 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

09:43AM 13 THE COURT: ALL RIGHT. THANK YOU THEN.

09:43AM 14 LET'S CALL MR. GROSSMAN BACK, PLEASE.

09:44AM 15 THANK YOU. GOOD MORNING, SIR.

09:44AM 16 PLEASE HAVE A SEAT, AND AGAIN, MAKE YOURSELF COMFORTABLE.

09:44AM 17 WHEN YOU ARE COMFORTABLE, SIR, WOULD YOU JUST PLEASE STATE

09:44AM 18 YOUR NAME AGAIN.

09:44AM 19 THE WITNESS: YES. BRIAN, B-R-I-A-N, GROSSMAN,

09:44AM 20 G-R-O-S-S-M-A-N.

09:44AM 21 THE COURT: THANK YOU.

09:44AM 22 **(GOVERNMENT'S WITNESS, BRIAN GROSSMAN, WAS PREVIOUSLY**

09:44AM 23 **SWORN.)**

09:44AM 24 THE COURT: MS. WALSH.

09:44AM 25 MS. WALSH: THANK YOU, YOUR HONOR.

09:44AM 1 MAY I APPROACH THE BENCH?

09:44AM 2 THE COURT: YES.

09:45AM 3 MS. WALSH: AND MAY I APPROACH THE WITNESS?

09:45AM 4 THE COURT: YES.

09:45AM 5 MS. WALSH: (HANDING.)

09:45AM 6 **CROSS-EXAMINATION (RESUMED)**

09:45AM 7 BY MS. WALSH:

09:45AM 8 Q. ALL RIGHT. WELCOME BACK, MR. GROSSMAN.

09:45AM 9 A. THANK YOU.

09:45AM 10 Q. I WANT TO DIRECT YOUR ATTENTION THIS MORNING TO WHEN YOU
09:45AM 11 FIRST HEARD OF THERANOS.

09:45AM 12 AND I JUST GAVE YOU A BINDER OF DOCUMENTS. IF YOU COULD
09:45AM 13 TURN IN THAT BINDER TO EXHIBIT 7353.

09:46AM 14 A. OKAY.

09:46AM 15 Q. OKAY. THAT'S AN EMAIL, IS IT NOT, BETWEEN YOU AND TWO OF
09:46AM 16 YOUR TEAM MEMBERS THAT YOU TESTIFIED ABOUT ON WEDNESDAY; IS
09:46AM 17 THAT RIGHT?

09:46AM 18 A. THE TOP PART IS.

09:46AM 19 I THINK THE LOWER PART IS BETWEEN AN INDIVIDUAL, WHO IS
09:46AM 20 NOT PART OF PFM, AND MY BUSINESS PARTNER. IT'S THE BEGINNING
09:46AM 21 OF THE CHAIN, YEAH.

09:46AM 22 Q. RIGHT.

09:46AM 23 AND THAT'S MR. JAMES; IS THAT RIGHT?

09:46AM 24 A. MR. JAMES IS MY BUSINESS PARTNER, AND THEN THOMAS LAFFONT
09:46AM 25 WOULD BE THE INDIVIDUAL WHO WAS NOT APART OF PFM. THAT'S THE

09:46AM 1 BEGINNING OF THE EMAIL CHAIN.

09:46AM 2 Q. RIGHT.

09:46AM 3 AND IN YOUR PROCESS OF GATHERING INFORMATION ABOUT
09:46AM 4 THERANOS, DID YOU COMMUNICATE WITH YOUR TEAM MEMBERS AND OTHER
09:46AM 5 PEOPLE OUTSIDE OF PFM BY EMAIL?

09:46AM 6 A. YES.

09:46AM 7 Q. OKAY. AND WAS THAT A REGULAR PART OF HOW PFM COMMUNICATED
09:46AM 8 WITH EACH OTHER IN GATHERING INFORMATION ABOUT COMPANIES?

09:47AM 9 A. IT COULD BE, YES.

09:47AM 10 Q. THAT WAS ONE OF THE WAYS THAT YOU COMMUNICATED; RIGHT?

09:47AM 11 A. IT -- INTERNALLY, YEAH, WE WOULD OFTEN USE EMAIL. IT'S
09:47AM 12 NOT ALWAYS THE BEST, MOST CONVENIENT, BUT, YEAH, EMAILS
09:47AM 13 INTERNALLY.

09:47AM 14 AND THEN, YOU KNOW, OFTENTIMES ANALYSTS WILL REACH OUT TO
09:47AM 15 SOMEONE AND POTENTIALLY ASK ABOUT A PARTICULAR COMPANY OR --
09:47AM 16 YOU KNOW, THAT'S VERY NORMAL.

09:47AM 17 Q. SO EMAIL WAS ONE OF THE WAYS THAT YOU COMMUNICATED ABOUT
09:47AM 18 COMPANIES THAT YOU WERE TRYING --

09:47AM 19 A. YES.

09:47AM 20 Q. -- THINKING ABOUT INVESTING IN?

09:47AM 21 A. YES.

09:47AM 22 Q. OKAY. AND IT WAS IMPORTANT IN THOSE EMAILS TO BE ACCURATE
09:47AM 23 ABOUT THE INFORMATION YOU WERE COMMUNICATING; RIGHT?

09:47AM 24 A. YES.

09:47AM 25 Q. AND THOSE EMAILS WERE PRESERVED BY PFM SO THEY COULD BE

09:47AM 1 REFERRED TO LATER; IS THAT RIGHT?

09:47AM 2 A. I BELIEVE WE HAVE A DOCUMENT RETENTION POLICY THAT IS

09:47AM 3 DRIVEN BY THE REGULATORY GUIDELINES FOR REGISTERED INVESTMENT

09:47AM 4 ADVISORS, YES.

09:47AM 5 Q. SO THE EMAILS WERE PRESERVED?

09:48AM 6 A. YES.

09:48AM 7 MS. WALSH: YOUR HONOR, WE OFFER 7353.

09:48AM 8 MR. LEACH: NO OBJECTION, YOUR HONOR.

09:48AM 9 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:48AM 10 (DEFENDANT'S EXHIBIT 7353 WAS RECEIVED IN EVIDENCE.)

09:48AM 11 MS. WALSH: GREAT. I THINK IT'S UP ON THE SCREEN

09:48AM 12 NOW.

09:48AM 13 Q. SO IF WE GO TO THE BOTTOM EMAIL, YOU MENTIONED

09:48AM 14 MR. LAFFONT; CORRECT?

09:48AM 15 A. YES.

09:48AM 16 Q. AND WHO IS MR. LAFFONT?

09:48AM 17 A. HE'S AN INVESTMENT PROFESSIONAL AT ANOTHER FIRM.

09:48AM 18 Q. OKAY. AND HE WAS FORWARDING TO MR. JAMES THE THERANOS

09:48AM 19 WEBSITE.

09:48AM 20 DO YOU SEE THAT?

09:48AM 21 A. YES.

09:48AM 22 Q. AND WHAT MR. LAFFONT SAID IS "LET ME KNOW ASAP IF THIS

09:48AM 23 PRIVATE COMPANY IS OF INTEREST TO YOU."

09:48AM 24 DO YOU SEE THAT?

09:48AM 25 A. I DO.

09:48AM 1 Q. AND THEN HE SAYS, "ONE OF THE MOST IMPRESSIVE BOARDS I'VE
09:48AM 2 EVER SEEN."

09:48AM 3 DO YOU SEE THAT?

09:48AM 4 A. YES.

09:48AM 5 Q. AND YOU CAME TO LEARN THAT THERANOS'S BOARD CONTAINED
09:49AM 6 PROMINENT BUSINESS PEOPLE; IS THAT FAIR?

09:49AM 7 A. YES.

09:49AM 8 Q. AND ONE OF THOSE PEOPLE WAS DON LUCAS; RIGHT?

09:49AM 9 A. I BELIEVE HE WAS A BOARD MEMBER, YES.

09:49AM 10 Q. AND MR. LUCAS WAS THE CHAIR OF THE BOARD AT ORACLE;
09:49AM 11 CORRECT?

09:49AM 12 A. I DON'T KNOW THAT.

09:49AM 13 Q. YOU DON'T?

09:49AM 14 A. I DON'T REALLY KNOW -- I VAGUELY REMEMBER DON LUCAS BEING
09:49AM 15 INVOLVED WITH THE COMPANY, BUT I DON'T KNOW WHO HE IS. I DON'T
09:49AM 16 KNOW REALLY ANYTHING ABOUT HIM.

09:49AM 17 Q. OKAY. ANOTHER BOARD MEMBER WAS WILLIAM FRIST. WERE YOU
09:49AM 18 AWARE OF THAT?

09:49AM 19 A. I WAS AVAILABLE -- I WAS FAMILIAR WITH MR. FRIST, WHO WAS
09:49AM 20 THE SENATE MAJORITY LEADER WHEN HE WAS A U.S. SENATOR FROM
09:49AM 21 TENNESSEE.

09:49AM 22 Q. OKAY. AND HE WAS ALSO A MEDICAL DOCTOR, WAS HE NOT?

09:49AM 23 A. YEAH, I BELIEVE HE WAS A -- YES, YES.

09:49AM 24 Q. OKAY. AND ANOTHER BOARD MEMBER WAS RICHARD KOVACEVICH.
09:50AM 25 DO YOU REMEMBER HIM BEING A BOARD MEMBER?

09:50AM 1 A. I DO.

09:50AM 2 Q. AND HE WAS THE CEO OF WELLS FARGO; CORRECT?

09:50AM 3 A. I THINK HE MIGHT HAVE BEEN RETIRED AT THAT POINT, BUT I

09:50AM 4 THINK HE WAS A FORMER CEO OF WELLS FARGO.

09:50AM 5 Q. OKAY. AND SO MR. JAMES IN THIS EMAIL FORWARDS THE EMAIL

09:50AM 6 TO YOU.

09:50AM 7 DO YOU SEE THAT IN THE MIDDLE?

09:50AM 8 A. YES, I DO.

09:50AM 9 Q. AND MR. JAMES SAYS "WOULD YOU SAY SEE"; RIGHT?

09:50AM 10 A. YES.

09:50AM 11 Q. AND THEN YOU FORWARD THE EMAIL TO YOUR -- TO YOUR TWO TEAM

09:50AM 12 MEMBERS, MR. KHANNA AND DR. RABODZEY; RIGHT?

09:50AM 13 A. YES.

09:50AM 14 Q. AND YOU ASK "EITHER OF YOU HEARD OF THIS COMPANY?"

09:50AM 15 RIGHT?

09:50AM 16 A. YES.

09:50AM 17 Q. AND MR. KHANNA SAYS, "NO BUT LOOKS VERY INTERESTING."

09:51AM 18 CORRECT?

09:51AM 19 A. YES.

09:51AM 20 Q. AND WE CAN TAKE THAT DOWN. THANK YOU.

09:51AM 21 THE FIRST MEETING THAT YOU HAD WITH ANYONE FROM THERANOS

09:51AM 22 WAS IN DECEMBER OF 2013; IS THAT RIGHT?

09:51AM 23 A. THAT'S CORRECT.

09:51AM 24 Q. AND AT THAT POINT IN TIME YOU KNEW THAT THERANOS HAD

09:51AM 25 ANNOUNCED A PARTNERSHIP WITH WALGREENS; RIGHT?

09:51AM 1 A. THAT'S CORRECT.

09:51AM 2 Q. AND THAT ANNOUNCEMENT HAD OCCURRED IN SEPTEMBER 2013;

09:51AM 3 RIGHT?

09:51AM 4 A. I BELIEVE THAT'S RIGHT.

09:51AM 5 Q. OKAY. AND THEN LATER IN THE FALL, THERANOS OPENED ITS

09:51AM 6 FIRST PATIENT SERVICE CENTER INSIDE WALGREENS; CORRECT?

09:51AM 7 A. YES.

09:51AM 8 Q. AND THEN LATER ON IN THE FALL IT OPENED TWO OTHER STORES

09:51AM 9 IN ARIZONA; IS THAT RIGHT?

09:51AM 10 A. I BELIEVE THAT'S RIGHT.

09:51AM 11 Q. SO IF YOU COULD, MR. GROSSMAN, TURN TO EXHIBIT 7358 IN

09:51AM 12 YOUR BINDER.

09:51AM 13 DO YOU SEE THAT?

09:51AM 14 A. I -- YES.

09:52AM 15 Q. AND IS THAT ANOTHER EMAIL CHAIN WITH YOUR TEAM MEMBERS

09:52AM 16 ABOUT THERANOS AND ITS RELATIONSHIP WITH WALGREENS?

09:52AM 17 A. DO YOU MIND IF I JUST READ THE --

09:52AM 18 Q. NOT AT ALL.

09:52AM 19 A. OKAY.

09:52AM 20 (PAUSE IN PROCEEDINGS.)

09:52AM 21 THE WITNESS: OKAY.

09:52AM 22 BY MS. WALSH:

09:52AM 23 Q. AND THIS EMAIL CHAIN IS IN NOVEMBER OF 2013; RIGHT?

09:52AM 24 A. YES.

09:52AM 25 Q. AND THAT'S PRIOR TO YOUR FIRST MEETING WITH THERANOS; IS

09:52AM 1 THAT CORRECT?

09:52AM 2 A. YES.

09:52AM 3 MS. WALSH: YOUR HONOR, WE OFFER 7358.

09:52AM 4 MR. LEACH: NO OBJECTION, YOUR HONOR.

09:52AM 5 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

09:52AM 6 (DEFENDANT'S EXHIBIT 7358 WAS RECEIVED IN EVIDENCE.)

09:52AM 7 BY MS. WALSH:

09:52AM 8 Q. OKAY. JUST TURNING TO THE BOTTOM OF THE EMAIL CHAIN, IT

09:52AM 9 STARTS WITH AN EMAIL FROM YOU TO DR. RABODZEY AND MR. KHANNA,

09:53AM 10 AND THE SUBJECT LINE IS, IS THIS SOMETHING WE SHOULD WORK UP ON

09:53AM 11 THE PRIVATE SIDE?

09:53AM 12 DO YOU SEE THAT?

09:53AM 13 A. I DO, YES.

09:53AM 14 Q. AND YOU FORWARD THE WEBSITE FOR THERANOS; RIGHT?

09:53AM 15 A. YES.

09:53AM 16 Q. AND MR. KHANNA REPLIES TO YOU, "YES, VERY GOOD FEEDBACK

09:53AM 17 FROM WALGREENS."

09:53AM 18 DO YOU SEE THAT?

09:53AM 19 A. YES, WAG BEING THE STOCK TICKER FOR WALGREENS, YES.

09:53AM 20 Q. YES. THANK YOU.

09:53AM 21 WAG STANDS FOR WALGREENS; CORRECT?

09:53AM 22 A. YEAH.

09:53AM 23 Q. AND YOU THEN ASK IN RESPONSE, "WHAT DID THEY SAY? HOW

09:53AM 24 WILL IT FIT IN WALGREENS'S BUSINESS GOING FORWARD? WHAT DOES

09:53AM 25 IT MEAN FOR LH."

09:53AM 1 AND THAT'S LABCORP; RIGHT?

09:53AM 2 A. YES.

09:53AM 3 Q. AND "/DGX," THAT'S QUEST; CORRECT?

09:53AM 4 A. YES.

09:53AM 5 Q. AND "LONGER TERM?"

09:53AM 6 DO YOU SEE THAT?

09:53AM 7 A. I DO.

09:53AM 8 Q. AND LABCORP AND QUEST WERE TWO MAJOR PLAYERS IN THE LAB
09:54AM 9 BUSINESS; CORRECT?

09:54AM 10 A. YES.

09:54AM 11 Q. AND SO THEY WERE COMPETITORS OF THERANOS; CORRECT?

09:54AM 12 A. YES.

09:54AM 13 Q. AND THEN GOING UP THE CHAIN, MR. KHANNA REPLIES WITH
09:54AM 14 WALGREENS COLON?

09:54AM 15 AND THEN HE QUOTES A PARAGRAPH.

09:54AM 16 DO YOU SEE THAT PARAGRAPH?

09:54AM 17 A. I DO.

09:54AM 18 Q. AND THAT PARAGRAPH IS A QUOTE FROM AN ANALYST; CORRECT?

09:54AM 19 A. THAT'S NOT CORRECT.

09:54AM 20 Q. OKAY. WHAT IS THAT QUOTE FROM?

09:54AM 21 A. IT'S A QUOTE FROM SOMEONE THAT WOULD -- I GUESS THEIR
09:54AM 22 TITLE WOULD BE INSTITUTIONAL SALESPERSON.

09:54AM 23 SO THEIR JOB IS TO -- THEY'RE SORT OF LIKE A STOCKBROKER
09:54AM 24 TO INSTITUTIONAL ASSET MANAGERS BY PFM. AND THEY'RE KIND OF A
09:54AM 25 LIAISON BETWEEN THE RESEARCH DEPARTMENT AND CLIENTS LIKE US.

09:54AM 1 AND SO THEY WILL OFTEN PARAPHRASE, AND THEY'LL OFTEN SORT
09:55AM 2 OF PUT THEIR OWN -- WRITE THEIR OWN DESCRIPTION OF RESEARCH
09:55AM 3 THAT THE FIRM IN THIS CASE, I THINK IT'S NOT LISTED HERE, BUT I
09:55AM 4 THINK IT'S COWEN, AND THEY'LL PUT THEIR OWN PERSPECTIVE,
09:55AM 5 THEY'LL EDIT THE RESEARCH THAT COMES OUT, AND THAT'S WHAT I
09:55AM 6 BELIEVE THIS PARAGRAPH IS.

09:55AM 7 Q. OKAY. AND SO WHAT MR. KHANNA IS QUOTING IS COWEN'S VIEW
09:55AM 8 AND RESEARCH REGARDING WALGREENS; IS THAT RIGHT?

09:55AM 9 A. NOT QUITE. IT'S ACTUALLY THIS ONE INDIVIDUAL'S VIEW OF
09:55AM 10 HIS INTERPRETATION OF WHAT THE ANALYST -- I THINK THE
09:55AM 11 ANALYST -- THIS IS PROBABLY MORE INFORMATION.

09:55AM 12 BUT THERE'S A MORNING MEETING THAT TYPICALLY HAPPENS, AND
09:55AM 13 THE ANALYST WILL GET ON AND SAY SOME THINGS, AND IT'S A BIG
09:55AM 14 NETWORK OF PEOPLE THAT CAN LISTEN.

09:55AM 15 AND THEN THE INDIVIDUAL THAT WROTE THIS, WROTE IN HIS OWN
09:55AM 16 WORDS, I BELIEVE, WHAT HIS TAKEAWAYS FROM THAT VERBAL
09:56AM 17 DESCRIPTION OR SOMETHING ALONG THOSE LINES.

09:56AM 18 SO IT WAS -- THAT INDIVIDUAL IS NOT NAMED IN THIS EMAIL,
09:56AM 19 BUT IT'S HIS WORDS.

09:56AM 20 Q. AND THAT INDIVIDUAL IS SOMEONE FROM WALGREENS; IS THAT
09:56AM 21 CORRECT?

09:56AM 22 A. NO, THAT'S NOT CORRECT. THAT WOULD BE SOMEONE FROM COWEN,
09:56AM 23 WHICH IS THE INVESTMENT BANK THAT CHARLES RHYEE WORKS FOR.

09:56AM 24 Q. OKAY.

09:56AM 25 A. IT WOULD BE A COLLEAGUE OF CHARLES RHYEE.

09:56AM 1 Q. OKAY. AND MR. KHANNA IS RELAYING MR. RHYEE'S TAKEAWAY
09:56AM 2 FROM THAT; IS THAT RIGHT?

09:56AM 3 A. YEAH, I MEAN -- YES. BUT HE'S RELAYING THIS OTHER
09:56AM 4 INDIVIDUAL'S DESCRIPTION OF MR. RHYEE'S COMMENTS, YES.

09:56AM 5 Q. SO THE ANSWER IS YES?

09:56AM 6 A. YES.

09:56AM 7 Q. OKAY. AND SO WHAT HE SAYS IS, "RHYEE REMAINS BULLISH POST
09:56AM 8 MARKETING WITH THE IR TEAM."

09:56AM 9 AND IR STANDS FOR INVESTOR RELATIONS?

09:56AM 10 A. YES, THAT'S EXACTLY RIGHT.

09:56AM 11 Q. OKAY. "SEVERAL UPDATES IN THE NOTE BUT PERHAPS MOST
09:57AM 12 INTERESTING IS THEIR EXPANSION INTO DIAGNOSTICS WITH THERANOS."

09:57AM 13 THAT'S REFERRING TO WALGREENS'S EXPANSION INTO DIAGNOSTICS
09:57AM 14 WITH THERANOS; CORRECT?

09:57AM 15 A. YES.

09:57AM 16 Q. "WE THINK IT WOULD BE A GAME CHANGER AND PLAYS INTO OUR
09:57AM 17 THESIS OF THE COMMUNITY PHARMACY BECOMING A DESTINATION FOR
09:57AM 18 BROADER ARRAY OF HEALTH CARE SERVICES. THERANOS IS UNIQUE
09:57AM 19 GIVEN THEIR ABILITY TO RUN THE VAST MAJORITY OF STANDARD BLOOD
09:57AM 20 TESTS FROM A MUCH SMALLER SAMPLE OF BLOOD THAT CAN BE COLLECTED
09:57AM 21 FROM A FINGER PRICK BUT PERHAPS MORE IMPORTANTLY, PRICING IS
09:57AM 22 50 PERCENT OF MEDICARE."

09:57AM 23 DID I READ THAT ACCURATELY?

09:57AM 24 A. YOU DID, VERY ACCURATELY.

09:57AM 25 Q. AND THEN IF WE GO UP THE CHAIN, IT'S AN EMAIL FROM YOU,

09:57AM 1 YOUR REACTION TO THAT TO YOUR TEAM MEMBERS SAYING "WOWZER.

09:57AM 2 THAT'S QUITE AN ENDORSEMENT."

09:57AM 3 CORRECT?

09:57AM 4 A. YES.

09:58AM 5 Q. AND THAT ENDORSEMENT, WAS AN ENDORSEMENT BY MR. RHYEE; IS
09:58AM 6 THAT RIGHT?

09:58AM 7 A. WELL, I THINK I'LL MAYBE GIVE MY PERSPECTIVE ON WHAT THAT
09:58AM 8 PARAGRAPH IS REFERRING TO.

09:58AM 9 I THINK, I THINK IT'S REALLY THE IR TEAM FROM WALGREENS.
09:58AM 10 SO IT'S THE WALGREENS -- I DON'T KNOW WHO FROM WALGREENS -- WHO
09:58AM 11 WAS -- MARKETING HERE REFERS TO THE IDEA THAT CHARLES RHYEE WAS
09:58AM 12 TAKING THE WALGREENS IR TEAM IN TO MEET WITH INVESTORS, LIKE
09:58AM 13 FIDELITY, JP MORGAN, YOU KNOW, STATE STREET.

09:58AM 14 AND IN THOSE MEETINGS, THE IR TEAM FROM WALGREENS WAS VERY
09:58AM 15 POSITIVE ABOUT THE THERANOS TECHNOLOGY, AND IT WAS PART OF A
09:58AM 16 BROADER STRATEGY THAT WALGREENS HAD TO TURN THEIR PHARMACIES
09:58AM 17 INTO MORE OF A SITE FOR DELIVERING HEALTH CARE OR A BROADER
09:58AM 18 STRATEGY.

09:58AM 19 SO HE'S REALLY REFERRING TO THE -- WHAT I'M REFERRING TO
09:59AM 20 IS THE IR TEAM FROM WALGREENS IS PUBLICLY MAKING POSITIVE
09:59AM 21 STATEMENTS ABOUT THERANOS. THAT'S REALLY WHAT THE -- SORRY FOR
09:59AM 22 ALL OF THE EXCESS LANGUAGE, BUT, YEAH.

09:59AM 23 Q. OKAY. SO THE ENDORSEMENT THAT IS IN THIS EMAIL THAT WAS
09:59AM 24 WRITTEN BY THAT -- THAT WORD WAS WRITTEN BY YOU, YOU WERE
09:59AM 25 REFERRING TO THE ENDORSEMENT BY THE IR TEAM WITHIN WALGREENS;

09:59AM 1 IS THAT RIGHT?

09:59AM 2 A. CORRECT, CORRECT.

09:59AM 3 Q. OKAY. AND WALGREENS WAS A COMPANY THAT PFM WAS FAMILIAR
09:59AM 4 WITH, WASN'T IT?

09:59AM 5 A. YES.

09:59AM 6 Q. PFM HAD OWNED STOCK IN WALGREENS AT VARIOUS POINTS IN
09:59AM 7 TIME; IS THAT RIGHT?

09:59AM 8 A. THAT IS RIGHT.

09:59AM 9 Q. AND SO PFM WAS GETTING -- WOULD GET ANALYST REPORTS
09:59AM 10 REGARDING WALGREENS; RIGHT?

09:59AM 11 A. YES.

09:59AM 12 Q. AND YOUR TEAM PERFORMED RESEARCH ON WALGREENS AS PART OF
10:00AM 13 THEIR JOB; RIGHT?

10:00AM 14 A. WE HAD ONE INDIVIDUAL IN OUR TEAM THAT WAS RESPONSIBLE FOR
10:00AM 15 THE SECTOR THAT WALGREENS WAS PART OF, WHICH WAS THE RETAIL
10:00AM 16 PHARMACY SECTOR.

10:00AM 17 AND SO THAT INDIVIDUAL WAS THE ONE WHO WAS RESPONSIBLE FOR
10:00AM 18 JUST BASICALLY KEEPING TRACK OF THAT INDUSTRY, INCLUDING
10:00AM 19 WALGREENS AND CVS AND RITE AID, AND EVEN SOME OF THE BIG
10:00AM 20 RETAILERS LIKE TARGET THAT HAVE RETAIL PHARMACY OPERATIONS.

10:00AM 21 Q. SO THAT ONE PERSON KEPT TRACK OF AND DID HIS OWN RESEARCH
10:00AM 22 ON WALGREENS; IS THAT RIGHT?

10:00AM 23 A. YES.

10:00AM 24 Q. OKAY. AND SO PFM HAD SOME BASIC UNDERSTANDING ABOUT
10:00AM 25 WALGREENS OPERATIONS; IS THAT FAIR?

10:00AM 1 A. YES.

10:00AM 2 Q. AND YOU KNEW THAT WALGREENS WAS AN EXPERIENCED RETAILER;

10:00AM 3 RIGHT?

10:00AM 4 A. YES.

10:00AM 5 Q. IT HAD A POWERFUL BRAND; CORRECT?

10:00AM 6 A. YES.

10:00AM 7 Q. IT HAD A LARGE NATIONAL FOOTPRINT; CORRECT?

10:00AM 8 A. YES.

10:00AM 9 Q. AND IT HAD SIGNIFICANT EXPERIENCE IN RETAIL OPERATIONS; IS

10:00AM 10 THAT RIGHT?

10:00AM 11 A. YES.

10:00AM 12 Q. SO IT WAS A POSITIVE FACT FOR THERANOS, THAT WALGREENS WAS

10:01AM 13 PARTNERING WITH THERANOS; IS THAT FAIR?

10:01AM 14 A. YES.

10:01AM 15 Q. AND THAT WAS A FACTOR ULTIMATELY IN YOUR DECISION TO

10:01AM 16 INVEST, WAS IT NOT?

10:01AM 17 A. YES.

10:01AM 18 Q. IF YOU COULD TURN TO 4052 IN YOUR BINDER.

10:01AM 19 DO YOU SEE THAT?

10:01AM 20 A. YEAH, I DO.

10:01AM 21 Q. OKAY. IS THIS ANOTHER EMAIL BETWEEN YOU AND MR. KHANNA --

10:01AM 22 A. YES.

10:01AM 23 Q. -- REGARDING RESEARCH ON THERANOS?

10:02AM 24 A. UM, I MEAN, IT'S REGARDING THERANOS. IT'S -- YES.

10:02AM 25 MS. WALSH: YOUR HONOR, WE OFFER 4052.

10:02AM

1

MR. LEACH: NO OBJECTION, YOUR HONOR.

10:02AM

2

THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:02AM

3

(GOVERNMENT'S EXHIBIT 4052 WAS RECEIVED IN EVIDENCE.)

10:02AM

4

BY MS. WALSH:

10:02AM

5

Q. OKAY. AND, MR. GROSSMAN, YOU ARE ASKING MR. KHANNA IF

10:02AM

6

THERE'S ANYTHING WALGREENS OR OTHERS HAVE SAID ABOUT THERANOS

10:02AM

7

THAT CAN HELP YOU PREPARE FOR YOUR MEETING WITH THERANOS;

10:02AM

8

CORRECT?

10:02AM

9

A. IPV JUST WANTED TO ADD PUBLICLY, LIKE WHAT PUBLIC

10:02AM

10

STATEMENTS HAVE THEY MADE ABOUT THERANOS.

10:02AM

11

BUT, YES, I AGREE.

10:02AM

12

Q. OKAY. WHAT PUBLIC STATEMENTS THEY HAVE MADE ABOUT

10:02AM

13

THERANOS; RIGHT?

10:02AM

14

A. CORRECT.

10:02AM

15

Q. AND MR. KHANNA RESPONDS WITH "LH-" THAT'S LABCORP; RIGHT?

10:02AM

16

A. YES.

10:02AM

17

Q. "THEY THINK THE TECHNOLOGY DOES NOT WORK. MENU VERY

10:02AM

18

LIMITED COMPARED TO LH," WHICH IS LABCORP, "AND DGX," WHICH IS

10:03AM

19

QUEST; RIGHT?

10:03AM

20

A. YES.

10:03AM

21

Q. DO YOU SEE THAT?

10:03AM

22

A. YES, I DO, YES.

10:03AM

23

Q. "COST OF DISTRIBUTION TO TESTING CENTERS IS HIGH."

10:03AM

24

DO YOU SEE THAT?

10:03AM

25

A. I DO SEE THAT, YES.

10:03AM 1 Q. "HOW DO U GET PATIENT REFERRALS INTO THE WAG STORE TO GET
10:03AM 2 BLOOD DRAWN. STORE IN PALO ALTO IS NOT FUNCTIONAL."

10:03AM 3 DO YOU SEE THAT?

10:03AM 4 A. YES, I DO SEE THAT.

10:03AM 5 Q. "...NOT SURE IF THIS IS TRUE. MOST DOCS HAVE A
10:03AM 6 PHLEBOTOMIST IN THEIR OFFICE AND ARE UNLIKELY TO ALLOW THIS
10:03AM 7 REVENUE LEAKAGE."

10:03AM 8 DO YOU SEE THAT?

10:03AM 9 A. I DO.

10:03AM 10 Q. AND JUST SKIPPING DOWN TO THE LAST LINE, "WAG -- THEY
10:03AM 11 THINK IT IS VERY EXCITING AND WILL LIKELY BUNDLE WITH THEIR
10:03AM 12 EXISTING PAYOR CONTRACTS."

10:03AM 13 DO YOU SEE THAT?

10:03AM 14 A. I DO.

10:03AM 15 Q. AND SO THIS WAS MR. KHANNA REACHING OUT TO HIS SOURCES TO
10:04AM 16 GET INFORMATION ABOUT THERANOS, ISN'T IT?

10:04AM 17 MR. LEACH: OBJECTION, YOUR HONOR. MISSTATES.

10:04AM 18 THE WITNESS: I REALLY DON'T --

10:04AM 19 THE COURT: EXCUSE ME, SIR.

10:04AM 20 SPECULATION, DID YOU SAY?

10:04AM 21 MR. LEACH: SPECULATION AND MISSTATES WHAT THE
10:04AM 22 WITNESS SAID.

10:04AM 23 THE COURT: I'LL SUSTAIN THE OBJECTION. WHY DON'T
10:04AM 24 YOU ASK A DIFFERENT QUESTION.

10:04AM 25 MS. WALSH: SURE, YOUR HONOR.

10:04AM 1 Q. SO MR. KHANNA REACHED OUT TO LABCORP ACCORDING TO THIS
10:04AM 2 EMAIL; RIGHT?

10:04AM 3 A. I DON'T BELIEVE THAT'S WHAT THIS EMAIL SAYS.

10:04AM 4 Q. OKAY. MR. KHANNA GOT INFORMATION ABOUT LABCORP; IS THAT
10:04AM 5 RIGHT?

10:04AM 6 A. HE APPEARS TO HAVE FOUND SOMETHING THAT LABCORP HAS SAID
10:04AM 7 PUBLICLY ABOUT THIS COMPANY. THAT WOULD BE MY INTERPRETATION.

10:04AM 8 BUT LIKE I SAID, I DON'T KNOW EXACTLY WHO HE SPOKE TO, HOW
10:04AM 9 HE ACQUIRED THIS INFORMATION.

10:04AM 10 Q. OKAY. BUT REGARDLESS OF HOW HE ACQUIRED IT, HE WAS
10:04AM 11 COMMUNICATING TO YOU INFORMATION THAT HE HAD RECEIVED ABOUT
10:04AM 12 THERANOS; IS THAT RIGHT?

10:04AM 13 A. THAT DOES APPEAR TO BE RIGHT.

10:04AM 14 Q. OKAY. SO YOU TESTIFIED THAT YOUR FIRST MEETING AT
10:05AM 15 THERANOS WAS IN DECEMBER OF 2013; IS THAT RIGHT?

10:05AM 16 A. YES.

10:05AM 17 Q. AND THIS WAS AN INTRODUCTORY MEETING; CORRECT?

10:05AM 18 A. YES.

10:05AM 19 Q. YOU HAD DONE A LITTLE BIT OF RESEARCH ON THE INTERNET;
10:05AM 20 RIGHT?

10:05AM 21 A. I BELIEVE THAT'S RIGHT.

10:05AM 22 Q. BUT YOU HADN'T DONE KIND OF A FULL DUE DILIGENCE AT THAT
10:05AM 23 POINT IN TIME; IS THAT RIGHT?

10:05AM 24 A. NO, WE DID NOT.

10:05AM 25 Q. OKAY. SO IT WAS KIND OF A GETTING-TO-KNOW-YOU MEETING

10:05AM 1 WITH MR. BALWANI AND MS. HOLMES; IS THAT RIGHT?

10:05AM 2 A. I MEAN, WE WANTED TO HEAR THEIR STORY.

10:05AM 3 Q. OKAY. AND WHEN YOU HAD THAT MEETING IN DECEMBER, YOU
10:05AM 4 UNDERSTOOD AT THE TIME THAT THERANOS HAD ONLY A FEW STORES IN
10:05AM 5 WALGREENS; IS THAT RIGHT?

10:05AM 6 A. YES.

10:05AM 7 Q. A FEW PATIENT SERVICE CENTERS; CORRECT?

10:05AM 8 A. YES.

10:05AM 9 Q. OKAY. THERE WAS ONE IN PALO ALTO; RIGHT?

10:05AM 10 A. YES.

10:05AM 11 Q. AND TWO IN ARIZONA; RIGHT?

10:06AM 12 A. I BELIEVE THAT WAS -- THAT'S THE CASE, YES.

10:06AM 13 Q. AND SO WHEN YOU MET, THEY HAD A TOTAL OF THREE PATIENT
10:06AM 14 SERVICE CENTERS IN ALL OF WALGREENS; IS THAT CORRECT?

10:06AM 15 A. YES.

10:06AM 16 Q. AND YOU LEARNED DURING THIS MEETING, DIDN'T YOU, THAT
10:06AM 17 THERANOS AND WALGREENS WERE TAKING A PHASED APPROACH TO THE
10:06AM 18 ROLLOUT; IS THAT RIGHT?

10:06AM 19 A. WELL, I -- MY MEMORY OF THAT MEETING WAS THAT THEY WERE
10:06AM 20 GOING TO BE ROLLING OUT TO ALL OF THE 8100 STORES. THEY HAD A
10:06AM 21 NATIONAL PLAN TO ROLL OUT NATIONALLY, AND THAT THE FIRST
10:06AM 22 MARKET, IF THAT'S THE PHASE, WOULD BE THE FIRST PHASE WOULD BE
10:06AM 23 IN THE PHOENIX MARKET.

10:06AM 24 Q. OKAY. SO LET ME -- MY QUESTION WAS NOT CLEAR.

10:06AM 25 YOU LEARNED DURING THAT MEETING THAT THE FIRST PHASE OF

10:06AM 1 THE ROLLOUT WAS GOING TO BE BASED ON A HUB AND SPOKE MODEL; IS
10:07AM 2 THAT CORRECT?

10:07AM 3 A. I DON'T REMEMBER SPECIFICALLY IF WE TALKED ABOUT THAT IN
10:07AM 4 THE FIRST MEETING.

10:07AM 5 BUT WHAT I DO REMEMBER ABOUT THE FIRST MEETING WAS THAT
10:07AM 6 THEY HIGHLIGHTED THE 8100 WALGREENS STORES, THE NEED TO MOVE
10:07AM 7 QUICKLY AND ROLL THIS OUT NATIONALLY, AND THE FACT THAT THEY
10:07AM 8 WERE ACTUALLY USING THEIR PROPRIETARY TECHNOLOGY AT THAT POINT
10:07AM 9 IN TIME IN WALGREENS ON ACTUAL HUMANS AND HUMANS, AND THEY WERE
10:07AM 10 GETTING REIMBURSED FOR THAT.

10:07AM 11 Q. SO WHETHER YOU LEARNED IT IN THE DECEMBER MEETING OR
10:07AM 12 LATER, AT SOME POINT YOU LEARNED THAT THEY WERE USING A HUB AND
10:07AM 13 SPOKE MODEL IN THE FIRST PHASE OF THE ROLLOUT; IS THAT CORRECT?

10:07AM 14 A. YES.

10:07AM 15 Q. AND THAT FIRST PHASE, THE HUB AND SPOKE MODEL INVOLVED
10:07AM 16 COLLECTING SAMPLES AT WALGREENS; RIGHT?

10:07AM 17 A. YES.

10:07AM 18 Q. AND SHIPPING THOSE SAMPLES TO THERANOS; RIGHT?

10:07AM 19 A. YES.

10:07AM 20 Q. AND TESTING THOSE SAMPLES IN THE THERANOS LAB; CORRECT?

10:07AM 21 A. YES.

10:07AM 22 Q. LIKE YOU WOULD DO IN A CENTRAL LAB; RIGHT?

10:08AM 23 A. YES.

10:08AM 24 Q. OKAY. AND THAT THE THERANOS DEVICES WERE NOT GOING TO BE
10:08AM 25 IN THE WALGREENS STORES; IS THAT RIGHT?

10:08AM 1 A. THAT IS RIGHT.

10:08AM 2 Q. OKAY. AND YOU ALSO LEARNED AT SOME POINT THAT THERE WAS

10:08AM 3 GOING TO BE A SECOND PHASE TO THE ROLLOUT; RIGHT?

10:08AM 4 A. YES.

10:08AM 5 Q. AND THAT SECOND PHASE WOULD INVOLVE PUTTING THE DEVICES

10:08AM 6 THEMSELVES IN THE WALGREENS STORES; RIGHT?

10:08AM 7 A. YES.

10:08AM 8 Q. AND YOU LEARNED ABOUT THAT TWO PHASED APPROACH FROM EITHER

10:08AM 9 MS. HOLMES OR MR. BALWANI, OR BOTH; IS THAT FAIR?

10:08AM 10 A. YES.

10:08AM 11 Q. OKAY. AND YOU LEARNED THAT THE DEVICES WERE NOT GOING TO

10:08AM 12 BE IN THE WALGREENS STORES FROM THEM; IS THAT RIGHT?

10:08AM 13 A. I'M SORRY. CAN YOU BE A LITTLE MORE SPECIFIC.

10:08AM 14 Q. YOU LEARNED THAT THE DEVICES WERE NOT GOING TO BE IN THE

10:08AM 15 WALGREENS STORES IN PHASE I FROM MS. HOLMES AND MR. BALWANI; IS

10:08AM 16 THAT RIGHT?

10:08AM 17 A. YES, THAT IS CORRECT.

10:08AM 18 Q. AND YOU ALSO LEARNED THAT DURING THE RETAIL ROLLOUT,

10:09AM 19 THERANOS WAS GOING TO PUT A PAUSE ON ANY PROJECTS IT WAS DOING

10:09AM 20 WITH THE MILITARY; IS THAT RIGHT?

10:09AM 21 A. NO.

10:09AM 22 Q. YOU LEARNED THAT THEY WERE PUTTING A PAUSE ON

10:09AM 23 PHARMACEUTICAL STUDIES DURING AT LEAST THE INITIAL PHASE OF THE

10:09AM 24 ROLLOUT, DIDN'T YOU?

10:09AM 25 A. MAYBE YOU COULD BE SPECIFIC IN TERMS OF WHAT DID THE

10:09AM 1 INITIAL PHASE MEAN.

10:09AM 2 Q. THE PHASE I OF THE ROLLOUT?

10:09AM 3 A. NO, THAT WASN'T REALLY OUR UNDERSTANDING.

10:09AM 4 Q. OKAY: OKAY. BUT YOU KNEW DURING THIS ROLLOUT, YOU KNEW

10:09AM 5 THAT YOU HAD EXPERIENCE WITH WALGREENS, AND WALGREENS HAD

10:09AM 6 EXPERIENCE IN RETAIL; RIGHT?

10:09AM 7 A. YES.

10:09AM 8 Q. AND YOU ALSO KNEW THAT THERANOS HAD NO EXPERIENCE IN

10:10AM 9 RETAIL; CORRECT?

10:10AM 10 A. YES.

10:10AM 11 Q. ALL RIGHT. NEXT, I WANT TO TALK ABOUT INFORMATION THAT

10:10AM 12 YOU LEARNED AFTER THE DECEMBER 2013 MEETING.

10:10AM 13 SO IF YOU CAN TURN TO EXHIBIT 7376.

10:10AM 14 DO YOU HAVE THAT IN FRONT OF YOU?

10:10AM 15 A. I DO, YEAH.

10:10AM 16 Q. AND IS THAT ANOTHER EMAIL BETWEEN YOU AND YOUR TEAM

10:10AM 17 MEMBERS, MR. KHANNA AND DR. RABODZEY, ABOUT THERANOS?

10:11AM 18 A. YES, IT IS.

10:11AM 19 MS. WALSH: YOUR HONOR, WE OFFER EXHIBIT 7376.

10:11AM 20 MR. LEACH: NO OBJECTION, YOUR HONOR.

10:11AM 21 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:11AM 22 (DEFENDANT'S EXHIBIT 7376 WAS RECEIVED IN EVIDENCE.)

10:11AM 23 BY MS. WALSH:

10:11AM 24 Q. OKAY. SO THE SUBJECT LINE OF THIS IS THERANOS-COMMENTS ON

10:11AM 25 WALGREENS CALL.

10:11AM 1 DO YOU SEE THAT?

10:11AM 2 A. I DO.

10:11AM 3 Q. AND THE DATE OF THE EMAIL IS DECEMBER 20TH, 2013; RIGHT?

10:11AM 4 A. YES.

10:11AM 5 Q. OKAY. AND THIS WAS COMMENTS THAT MR. KHANNA WAS RELAYING
10:11AM 6 ABOUT A WALGREENS EARNINGS CALL; IS THAT RIGHT?

10:11AM 7 A. I MEAN, THESE ARE HIS -- THESE ARE STATEMENTS THAT
10:11AM 8 WALGREENS MADE ON THIS QUARTERLY -- COMPANIES HAVE THESE
10:11AM 9 QUARTERLY CONFERENCE CALLS, ALMOST ALL OF THEM DO, AND THEY
10:11AM 10 MAKE STATEMENTS, PREPARED STATEMENTS, AND THEN THEY ANSWER
10:11AM 11 QUESTIONS.

10:11AM 12 SO I BELIEVE THAT THIS EMAIL IS HIS NOTES FROM LISTENING
10:11AM 13 TO THE WALGREENS CALL, WHICH UNFORTUNATELY, THESE CALLS HAPPEN
10:11AM 14 VERY EARLY IN THE MORNING OUT HERE, SO THAT'S WHY IT'S 6:13 IN
10:12AM 15 THE MORNING.

10:12AM 16 Q. OKAY. SO THESE WERE MR. KHANNA'S NOTES OF THE EARNINGS
10:12AM 17 CALL THAT HE WAS RELAYING TO YOU; RIGHT?

10:12AM 18 A. YES.

10:12AM 19 Q. AND WHAT HE SAYS IS -- OR WHAT HE'S RELAYING TO YOU THAT
10:12AM 20 WALGREENS SAID DURING THE CALL --

10:12AM 21 A. YES.

10:12AM 22 Q. -- IS THAT "WE ARE VERY POSITIVE ON THERANOS, IT IS HALF
10:12AM 23 THE COST OF MEDICARE REIMBURSEMENT.

10:12AM 24 "DISRUPTIVE TECHNOLOGY.

10:12AM 25 "WE HAVE ASSETS, HEALTH CARE PROFESSIONALS, LOCATION AND

10:12AM 1 CAN PLAY A MEANINGFUL ROLE IN HEALTH CARE."

10:12AM 2 DO YOU SEE THAT?

10:12AM 3 A. I DO.

10:12AM 4 Q. "BETTER PATIENT EXPERIENCE."

10:12AM 5 RIGHT?

10:12AM 6 A. YES.

10:12AM 7 Q. "HIGHEST STANDARD OF CARE."

10:12AM 8 CORRECT?

10:12AM 9 A. YES.

10:12AM 10 Q. AND "BETTER, FASTER AND CHEAPER."

10:12AM 11 DO YOU SEE THAT?

10:12AM 12 A. I DO.

10:12AM 13 Q. AND LOOK -- IF WE COULD PULL UP -- WE CAN TAKE THAT DOWN

10:12AM 14 AND PULL UP 1360, WHICH IS IN EVIDENCE.

10:13AM 15 AND WE SAW ON WEDNESDAY, THIS WAS AN EMAIL FROM MR. JAMES;

10:13AM 16 RIGHT?

10:13AM 17 A. YES.

10:13AM 18 Q. AND THIS IS -- THE BOTTOM EMAIL IS DECEMBER 19TH, 2013;

10:13AM 19 CORRECT?

10:13AM 20 A. YES.

10:13AM 21 Q. AND MR. JAMES IS EMAILING ELIZABETH HOLMES; RIGHT?

10:13AM 22 A. YES.

10:13AM 23 Q. AND THIS WAS AFTER YOUR MEETING WITH THERANOS IN DECEMBER

10:13AM 24 OF 2013; RIGHT?

10:13AM 25 A. YES.

10:13AM 1 Q. SO HERE IT IS PFM THAT IS REACHING OUT TO THERANOS; IS
10:13AM 2 THAT CORRECT?

10:13AM 3 A. YES, HE IS EMAILING MS. HOLMES.

10:13AM 4 Q. RIGHT.

10:13AM 5 AND THIS REFLECTS AFTER THE MEETING THAT MR. JAMES REACHED
10:14AM 6 OUT TO MS. HOLMES; CORRECT?

10:14AM 7 A. YES.

10:14AM 8 Q. IT WASN'T THERANOS REACHING OUT TO PFM; RIGHT?

10:14AM 9 A. THAT'S CORRECT.

10:14AM 10 Q. SO IT WASN'T THERANOS PUTTING ANY PRESSURE AT THAT POINT
10:14AM 11 IN TIME ON THERANOS -- ON PFM TO INVEST IN THERANOS; RIGHT?

10:14AM 12 A. THAT'S CORRECT.

10:14AM 13 Q. OKAY. AND MS. HOLMES RESPONDS, "CHRIS.

10:14AM 14 "THANKS FOR THIS NOTE AND YOUR COMMENTS BELOW.

10:14AM 15 "WE'RE INTERESTED IN TAKING THE NEXT STEPS."

10:14AM 16 AND SHE ASKED ABOUT SIZE OF THE INVESTMENT.

10:14AM 17 DO YOU SEE THAT?

10:14AM 18 A. YES, I DO.

10:14AM 19 Q. OKAY. AND MR. JAMES SAYS, "WE WILL FOLLOW UP WITH DUE
10:14AM 20 DILIGENCE QUESTIONS AND A CALL WITH SUNNY WHEN IT WORKS."

10:14AM 21 AND THEN HE TALKS ABOUT SIZE AND BEING FLEXIBLE ABOUT
10:14AM 22 THAT.

10:14AM 23 DO YOU SEE THAT?

10:14AM 24 A. I DO.

10:14AM 25 Q. OKAY. AND AT THIS POINT IN TIME, YOU HAD NOT MADE ANY

10:14AM 1 INVESTMENT DECISIONS YET, HAD YOU?

10:14AM 2 A. NO, WE HAD NOT.

10:14AM 3 Q. OKAY. YOU WERE JUST KIND OF STARTING THE PROCESS; RIGHT?

10:14AM 4 A. IT'S KIND OF AN AWKWARD DANCE THAT HAPPENS ON PRIVATE

10:15AM 5 DEALS WHERE THEY SORT OF WANT TO KNOW WHAT YOU INVEST BECAUSE

10:15AM 6 THEY HAVE OTHER INVESTORS THAT ARE TYPICALLY ALSO INTERESTED,

10:15AM 7 AND SO THEY TRY TO START TO GET A SENSE OF WHOSE -- WHO WANTS

10:15AM 8 TO INVEST WHAT INTO THE ROUND, BUT NO -- IT'S NOT -- NOTHING IS

10:15AM 9 KIND OF FINALIZED OR OFFICIAL AT THIS POINT.

10:15AM 10 WE HAD JUST -- WE HADN'T EVEN REALLY STARTED OUR WORK YET.

10:15AM 11 Q. SO YOU HAD JUST STARTED YOUR PROCESS; IS THAT RIGHT?

10:15AM 12 A. I BELIEVE, YEAH, BETWEEN THE FIRST MEETING AND THE SECOND

10:15AM 13 MEETING WE WERE JUST KIND OF STARTING TO RAMP UP.

10:15AM 14 BUT, YOU KNOW, IT'S THE HOLIDAYS AND PEOPLE ARE TIRED.

10:15AM 15 YOU KNOW, WE DIDN'T DO MUCH AT THE END OF DECEMBER. WE TRY TO

10:15AM 16 GIVE PEOPLE A LITTLE BIT OF A BREAK.

10:15AM 17 Q. SO YOU JUST HAD STARTED YOUR PROCESS; IS THAT CORRECT?

10:15AM 18 A. YEAH.

10:15AM 19 Q. OKAY. AND YOU TALK ABOUT YOU WANTED TO AT THIS POINT GET

10:15AM 20 ADDITIONAL INFORMATION TO KIND OF START TO DIG INTO THERANOS;

10:15AM 21 IS THAT FAIR?

10:15AM 22 A. YES.

10:15AM 23 Q. OKAY. AND YOU'RE HAVING A DIALOGUE ABOUT PUTTING TOGETHER

10:16AM 24 A LIST OF DUE DILIGENCE QUESTIONS; IS THAT RIGHT?

10:16AM 25 A. I BELIEVE THAT WAS ONE OF THE NEXT THINGS THAT WE DID,

10:16AM 1 YES.

10:16AM 2 Q. OKAY. AND PULLING TOGETHER A DUE DILIGENCE TEAM; CORRECT?

10:16AM 3 A. YES.

10:16AM 4 Q. AND THAT'S A PRETTY STANDARD APPROACH YOU WOULD TAKE TO

10:16AM 5 INVESTING IN A PRIVATE COMPANY, ISN'T IT?

10:16AM 6 A. IT IS, YES.

10:16AM 7 Q. AND THE DUE DILIGENCE TEAM THAT YOU PUT TOGETHER, THAT

10:16AM 8 CONSISTED OF THE GENTLEMAN WE SPOKE ABOUT ON WEDNESDAY, AND WE

10:16AM 9 HAVE SEEN IN THESE EMAILS, MR. KHANNA, AND DR. RABODZEY, AND

10:16AM 10 MR. JAMES, AND OTHERS; IS THAT RIGHT?

10:16AM 11 A. YES.

10:16AM 12 Q. IF YOU COULD TURN TO 7378 IN YOUR BINDER.

10:17AM 13 SO THIS IS AN EMAIL CHAIN ON DECEMBER 24TH, 2013, AND IT'S

10:17AM 14 WITH MR. KHANNA AND MR. RABODZEY.

10:17AM 15 DO YOU SEE THAT?

10:17AM 16 A. I DO, YES.

10:17AM 17 Q. AND YOU SEE THE DATE; RIGHT?

10:17AM 18 A. YES.

10:17AM 19 Q. OKAY. AND IS THIS ANOTHER EMAIL CHAIN IN CONNECTION WITH

10:17AM 20 DOING YOUR RESEARCH ON THERANOS?

10:17AM 21 A. YES.

10:17AM 22 MS. WALSH: YOUR HONOR, WE OFFER 7378.

10:17AM 23 MR. LEACH: NO OBJECTION, YOUR HONOR.

10:17AM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:17AM 25 (DEFENDANT'S EXHIBIT 7378 WAS RECEIVED IN EVIDENCE.)

10:17AM 1 BY MS. WALSH:

10:17AM 2 Q. SO IF WE GO DOWN TO THE BOTTOM EMAIL, THE FIRST ONE IS

10:17AM 3 FROM YOU, MR. GROSSMAN.

10:17AM 4 DO YOU SEE THAT?

10:17AM 5 A. I DO.

10:17AM 6 Q. AND IT'S TO MR. KHANNA AND DR. RABODZEY; RIGHT?

10:17AM 7 A. RIGHT.

10:17AM 8 Q. AND YOU TELL THEM, "WE HAVE THE GREEN LIGHT TO MOVE

10:17AM 9 FORWARD."

10:17AM 10 RIGHT?

10:17AM 11 A. YES.

10:17AM 12 Q. "THEY WANT A LIST OF DUE DILIGENCE QUESTIONS."

10:17AM 13 CORRECT?

10:17AM 14 A. YES.

10:17AM 15 Q. AND YOU ASK THEM, "CAN U EACH PUT TOGETHER A LIST AND WE

10:18AM 16 CAN MERGE INTO 1 EMAIL WHICH WE CAN REVIEW BEFORE SENDING OFF

10:18AM 17 TO THE COMPANY."

10:18AM 18 CORRECT?

10:18AM 19 A. THAT'S CORRECT.

10:18AM 20 Q. OKAY. SO YOU'RE GOING TO WORK TOGETHER AS A TEAM TO PUT

10:18AM 21 TOGETHER QUESTIONS AND GET ANSWERS TO THOSE QUESTIONS.

10:18AM 22 IS THAT FAIR?

10:18AM 23 A. YES.

10:18AM 24 Q. AND MOVING UP THE CHAIN, DR. RABODZEY WRITES, "I AM

10:18AM 25 ACTUALLY ON MY WAY TO WALGREENS WHERE THE MACHINE IS, AND I

10:18AM 1 WILL HAVE A LIST OF QUESTIONS, BUT I WANTED TO SEE IF WE CAN
10:18AM 2 GET A BIT MORE DATA FROM THEM ON THE SYSTEM, OFFERING, SPECS,
10:18AM 3 ET CETERA."

10:18AM 4 DO YOU SEE THAT?

10:18AM 5 A. I DO.

10:18AM 6 Q. BUT YOU CAME TO LEARN THAT AT THIS POINT IN TIME THERANOS
10:18AM 7 MACHINES WERE NOT IN WALGREENS; RIGHT?

10:18AM 8 A. YES.

10:18AM 9 Q. OKAY. AND THEN MR. KHANNA RESPONDS, "OK.

10:18AM 10 "DO THE TEST."

10:18AM 11 THAT'S TO DR. RABODZEY; RIGHT?

10:18AM 12 A. YES.

10:18AM 13 Q. OKAY. AND THEN DR. RABODZEY RESPONDS, "THEY DON'T WORK
10:19AM 14 TODAY."

10:19AM 15 THAT'S REFERRING TO WALGREENS, RIGHT, OR THERANOS INSIDE
10:19AM 16 OF WALGREENS?

10:19AM 17 A. I THINK IT'S PROBABLY IN REFERENCE TO THE THERANOS
10:19AM 18 COLLECTION CENTER IN THE WALGREENS STORE.

10:19AM 19 Q. RIGHT.

10:19AM 20 "IT'S A WHOLE CENTER HERE. I DID TALK TO THEM THOUGH, THE
10:19AM 21 WALGREENS PERSON SAID IT THE SAME COST, SAME ACCURACY, BUT
10:19AM 22 SMALLER SAMPLE -- LESS BLOOD?"

10:19AM 23 DO YOU SEE THAT?

10:19AM 24 A. I DO.

10:19AM 25 Q. "YOU NEED AN ORDER FROM YOUR DOCTOR TO GET THE TEST, CAN'T

10:19AM 1 JUST WALK IN AND GET IT."

10:19AM 2 DO YOU SEE THAT?

10:19AM 3 A. I DO.

10:19AM 4 Q. SO TESTING FROM THERANOS WAS UNAVAILABLE AT WALGREENS, AT
10:19AM 5 LEAST IN WALGREENS THAT PARTICULAR DAY; RIGHT?

10:19AM 6 A. WELL, I BELIEVE THIS WAS CHRISTMAS EVE.

10:19AM 7 Q. RIGHT. SO IT WAS UNAVAILABLE; CORRECT?

10:19AM 8 A. I THINK THERE'S A LOT OF THINGS ON CHRISTMAS EVE THAT ARE
10:19AM 9 PROBABLY NOT AS AVAILABLE, BUT, YEAH.

10:19AM 10 Q. RIGHT.

10:20AM 11 A. DR. RABODZEY, HE LIVED IN PALO ALTO, SO HE LIVED NEAR THE
10:20AM 12 WALGREENS.

10:20AM 13 SO I THINK IT WAS CONVENIENT FOR HIM. HE HAD OBVIOUSLY,
10:20AM 14 UNLIKE ME, FINISHED HIS CHRISTMAS SHOPPING.

10:20AM 15 (LAUGHTER.)

10:20AM 16 BY MS. WALSH:

10:20AM 17 Q. THEY YOU GO.

10:20AM 18 BUT HE WAS UNABLE TO GET A TEST; CORRECT?

10:20AM 19 A. THAT'S CORRECT.

10:20AM 20 Q. OKAY. LET'S TURN TO 4063.

10:20AM 21 A. OKAY.

10:20AM 22 Q. DO YOU SEE 4063?

10:20AM 23 A. I DO SEE 4063.

10:20AM 24 Q. OKAY. AND IS 4063 AN EMAIL CHAIN BETWEEN YOU AND YOUR
10:21AM 25 TEAM MEMBERS ABOUT THE DUE DILIGENCE AND OTHER QUESTIONS THAT

10:21AM 1 YOU MIGHT HAVE ABOUT THERANOS?

10:21AM 2 A. IT IS. IT APPEARS TO BE QUESTIONS THAT WERE FORMING IN
10:21AM 3 ADVANCE OF OUR NEXT MEETING, YES.

10:21AM 4 Q. OKAY.

10:21AM 5 YOUR HONOR, WE OFFER 4063.

10:21AM 6 MR. LEACH: NO OBJECTION, YOUR HONOR.

10:21AM 7 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:21AM 8 (GOVERNMENT'S EXHIBIT 4063 WAS RECEIVED IN EVIDENCE.)

10:21AM 9 BY MS. WALSH:

10:21AM 10 Q. OKAY. IF WE CAN TURN TO THE FIRST EMAIL IN TIME.

10:21AM 11 THE INITIAL ONE IS FROM MR. KHANNA; RIGHT?

10:21AM 12 A. YES. WELL, THE INITIAL, YEAH.

10:21AM 13 Q. DO YOU SEE THAT?

10:21AM 14 A. YEAH.

10:21AM 15 Q. AND MR. KHANNA LISTS A BUNCH OF DIFFERENT QUESTIONS IN
10:21AM 16 THIS EMAIL; RIGHT?

10:21AM 17 A. YES.

10:22AM 18 Q. OKAY. AND JUST STARTING WITH A COUPLE OF THE ONES AT THE
10:22AM 19 TOP HE ASKS, "CAN YOU RUN THE TEST IN WALGREENS STORE -- POINT
10:22AM 20 OF CARE TESTING. IF NO, THEN WHAT IS THE STUMBLING BLOCK TO
10:22AM 21 RUNNING THE SAMPLE IN THE STORE AND PROVIDING THE PATIENT WITH
10:22AM 22 RESULTS AT POINT OF CARE -- WHAT IS YOUR CAPABILITY OF DOING
10:22AM 23 ESOTERIC TESTING AND HOW WILL YOU ADD NEW TESTS."

10:22AM 24 DO YOU SEE THAT?

10:22AM 25 A. I DO.

10:22AM 1 Q. OKAY. AND THEN ABOUT HALF WAY DOWN THAT PARAGRAPH THERE'S
10:22AM 2 A SENTENCE THAT STARTS, "THE COST OF."

10:22AM 3 HE WANTS TO ASK ABOUT THE COST OF GETTING SAMPLE TO
10:22AM 4 CENTRAL THERANOS PROCESSING CENTER IN TIME FOR TURN AROUND
10:22AM 5 RESULTS.

10:22AM 6 DO YOU SEE THAT?

10:22AM 7 A. I DO.

10:22AM 8 Q. AND THEN I'M NOT GOING TO READ EVERY SINGLE ONE OF THESE
10:22AM 9 QUESTIONS, BUT IF YOU SKIP DOWN TO THE FUTURE, UNDER THE FUTURE
10:22AM 10 HEADING, HE ASKS, "WHAT WILL THE ANALYZERS LOOK LIKE IN 2-3
10:22AM 11 YEARS -- HOW MANY TESTS DO U THINK YOU WILL OFFER."

10:23AM 12 MEANING HOW MANY TESTS WILL THERANOS OFFER; RIGHT?

10:23AM 13 A. YES.

10:23AM 14 Q. "HOW DO YOU GET NEW TEST, R&D SPENDING, ET CETERA."

10:23AM 15 DO YOU SEE THAT?

10:23AM 16 A. I DO.

10:23AM 17 Q. OKAY. AND SO THAT'S MR. KHANNA JUST IDENTIFYING SOME DUE
10:23AM 18 DILIGENCE QUESTIONS; CORRECT?

10:23AM 19 A. YES.

10:23AM 20 Q. AND THEN IF WE GO UP THE CHAIN, DR. RABODZEY ALSO ASKS
10:23AM 21 SOME QUESTIONS.

10:23AM 22 DO YOU SEE THAT?

10:23AM 23 A. I DO.

10:23AM 24 Q. AND HE SAYS, "MY QUESTIONS ARE BELOW."

10:23AM 25 DO YOU SEE THAT?

10:23AM 1

A. YES.

10:23AM 2

Q. AND THERE'S A SENTENCE A FEW LINES DOWN FROM THAT SAYING,

10:23AM 3

"THERANOS HAS A LIMITED MENU OF TESTS."

10:23AM 4

DO YOU SEE THAT?

10:23AM 5

A. YES.

10:23AM 6

Q. "AND DOCS WILL HAVE PROBLEMS SENDING PATIENTS TO LH,"

10:23AM 7

WHICH IS LABCORP; RIGHT?

10:23AM 8

A. YES.

10:23AM 9

Q. "FOR ONE TEST AND TO THERANOS FOR ANOTHER."

10:24AM 10

DO YOU SEE THAT?

10:24AM 11

A. YES.

10:24AM 12

Q. OKAY. AND THEN IF YOU SKIP DOWN TO THE PARAGRAPH STARTING

10:24AM 13

WITH "THE WAG PERSON TOLD ME."

10:24AM 14

DR. RABODZEY SAYS, "THE WAG PERSON TOLD ME TODAY THAT THE

10:24AM 15

ONLY REASON WHY SHE THINKS IT IS A BETTER TEST IS BECAUSE IT IS

10:24AM 16

A SMALLER VOLUME SAMPLE."

10:24AM 17

DO YOU SEE THAT?

10:24AM 18

A. I DO.

10:24AM 19

Q. "THIS IS NOT A DEAL BREAKER FOR MOST PATIENTS UNLESS THEY

10:24AM 20

ARE HEMOPHILIACS OR HAVE TO DO TESTS TWICE A WEEK. I THINK IT

10:24AM 21

IS ALSO CRITICAL TO UNDERSTAND WHERE DO THEY MAKE MONEY --

10:24AM 22

THEIR TESTS ARE VERY CHEAP AND WE NEED TO UNDERSTAND THE MARGIN

10:24AM 23

ON THESE TESTS AND HOW MANY TESTS NEED TO BE RUN TO REALLY MAKE

10:24AM 24

MONEY HERE."

10:24AM 25

DO YOU SEE THAT?

10:24AM 1 A. I DO SEE THAT.

10:24AM 2 Q. "I WOULD BE CONCERNED THAT THERE A CENTER LIKE THAT MAY
10:24AM 3 NOT BE PROFITABLE IN LOCATIONS WHERE THERE IS A DGX," WHICH IS
10:24AM 4 QUEST; RIGHT?

10:24AM 5 A. YES, THAT IS QUEST.

10:24AM 6 Q. "AND AN LH LAB," THAT'S LABCORP; RIGHT?

10:24AM 7 A. YES.

10:25AM 8 Q. "NEARBY JUST BECAUSE YOU DON'T HAVE THE VOLUME TO COVER
10:25AM 9 COSTS."

10:25AM 10 DO YOU SEE THAT?

10:25AM 11 A. YES.

10:25AM 12 Q. AND DR. RABODZEY GOES ON TO SAY, "ADDITIONALLY, I FOUND
10:25AM 13 NEW PATENTS THAT MAY PREDATE THEIR IP, SO I AM NOT SURE THAT
10:25AM 14 THEY CAN ACTUALLY PROTECT THE VALUE THEY MAY CREATE."

10:25AM 15 DO YOU SEE THAT?

10:25AM 16 A. I DO.

10:25AM 17 Q. AND YOU BECAME AWARE, DIDN'T YOU, THAT THERANOS HELD
10:25AM 18 PATENTS ON ITS TECHNOLOGY?

10:25AM 19 A. YES.

10:25AM 20 Q. AND THEY WERE TRYING TO PROTECT THEIR IP; RIGHT?

10:25AM 21 A. YES.

10:25AM 22 Q. LIKE ANY OTHER TECHNOLOGY COMPANY; CORRECT?

10:25AM 23 A. AND THEY HAD VERY POWERFUL BOARD MEMBERS, YES.

10:25AM 24 Q. AND ALSO, IN YOUR INVESTMENT EXPERIENCE, HAVING IP AND
10:25AM 25 PATENTS, THAT WOULD CREATE VALUE IN A COMPANY, WOULDN'T IT?

10:25AM 1 A. IT'S, I THINK, PART OF A -- YES, IT'S PART OF A BIGGER
10:25AM 2 QUESTION FROM AN INVESTMENT PERSPECTIVE THAT WE TRY TO ANSWER,
10:26AM 3 WHICH ARE WHAT ARE THE BARRIERS TO ENTRY? YOU KNOW, WHAT
10:26AM 4 PREVENTS ANOTHER COMPANY FROM COMPETING WITH A NEW TECHNOLOGY
10:26AM 5 OR AN EXISTING TECHNOLOGY?

10:26AM 6 AND IN PARTS OF THE WORLD LIKE THE U.S., PATENTS ARE OFTEN
10:26AM 7 ONE OF THE IMPORTANT BARRIERS TO ENTRY, NOT THE ONLY BARRIER TO
10:26AM 8 ENTRY, SOMETIMES NOT THE MOST IMPORTANT BARRIER TO ENTRY, BUT
10:26AM 9 SOMETHING FOR ANY NEW TECHNOLOGY THAT WE WOULD WANT TO
10:26AM 10 UNDERSTAND.

10:26AM 11 Q. SURE.

10:26AM 12 BUT JUST GENERALLY SPEAKING, HAVING IP AND PATENTS IN A
10:26AM 13 COMPANY SIGNIFIES VALUE IN THAT COMPANY AS YOU AS -- IN YOUR
10:26AM 14 INVESTMENT EXPERIENCE?

10:26AM 15 A. I MEAN --

10:26AM 16 MR. LEACH: CALLS FOR SPECULATION.

10:26AM 17 THE WITNESS: I MEAN, TECHNICALLY YOU CAN GET A
10:26AM 18 PATENT --

10:26AM 19 THE COURT: PARDON ME, MR. GROSSMAN.

10:26AM 20 MR. LEACH: OBJECTION. IT CALLS FOR SPECULATION.
10:26AM 21 702.

10:26AM 22 THE COURT: ARE YOU ASKING ABOUT HIS EXPERIENCE AND
10:26AM 23 WHAT PATENT A PATENT PORTFOLIO MIGHT MEAN TO THAT DECISION?

10:26AM 24 MS. WALSH: I AM, YOUR HONOR. BUT I CAN MOVE ON TO
10:27AM 25 ANOTHER TOPIC.

10:27AM 1 THE COURT: OKAY. FINE.

10:27AM 2 BY MS. WALSH:

10:27AM 3 Q. OKAY. IF YOU COULD TURN, MR. GROSSMAN, TO EXHIBIT 7388.

10:27AM 4 A. OKAY.

10:27AM 5 Q. SO 7388 IS AN EMAIL FROM LISA GILL; CORRECT?

10:27AM 6 A. YES.

10:27AM 7 Q. AND WHO IS LISA GILL?

10:27AM 8 A. LISA GILL IS AN ANALYST. SHE'S WHAT WE WOULD CALL A SALE
10:27AM 9 SIDE ANALYST. SHE WORKS FOR A BANK, IN THIS CASE JP MORGAN,
10:27AM 10 AND HER JOB IS TO PUBLISH RESEARCH ON COMPANIES THAT SHE IS
10:27AM 11 RESPONSIBLE FOR COVERING.

10:28AM 12 SHE'S THE ANALYST THAT IS RESPONSIBLE FOR THE RETAIL
10:28AM 13 PHARMACY INDUSTRY, THE DRUG WHOLESALERS. I DON'T KNOW. A
10:28AM 14 COUPLE OF OTHERS.

10:28AM 15 SO, SO HER JOB IS TO PUBLISH RESEARCH. WE'RE CLIENTS OF
10:28AM 16 JP MORGAN'S. WE HAVE -- WE RECEIVE THEIR RESEARCH.

10:28AM 17 Q. OKAY. AND MS. GILL, IN THIS EMAIL, IS FORWARDING YOU SOME
10:28AM 18 RESEARCH RELATED TO THERANOS; IS THAT CORRECT?

10:28AM 19 A. I, I -- WOULD YOU LIKE ME TO READ?

10:28AM 20 Q. IF I COULD DIRECT YOUR ATTENTION TO THE LAST BULLET ON
10:28AM 21 THAT PAGE.

10:28AM 22 DO YOU SEE THAT?

10:28AM 23 A. YEAH. MAYBE I COULD JUST HAVE A MINUTE TO JUST --

10:28AM 24 Q. SURE.

10:28AM 25 (PAUSE IN PROCEEDINGS.)

10:28AM 1 THE WITNESS: OKAY.

10:29AM 2 BY MS. WALSH:

10:29AM 3 Q. HAVE YOU READ IT?

10:29AM 4 A. I MEAN, I SKIMMED IT. YEAH. A LOT TO READ.

10:29AM 5 Q. WELL, JUST THE LAST BULLET. IT'S ABOUT FIVE LINES LONG.

10:29AM 6 A. OH.

10:29AM 7 (PAUSE IN PROCEEDINGS.)

10:29AM 8 THE WITNESS: OKAY.

10:29AM 9 BY MS. WALSH:

10:29AM 10 Q. OKAY. SO IS THIS MS. GILL FORWARDING YOU RESEARCH ABOUT

10:29AM 11 WALGREENS, AND THAT LAST BULLET RELATES TO THERANOS?

10:29AM 12 A. YES.

10:30AM 13 Q. OKAY.

10:30AM 14 YOUR HONOR, WE OFFER 7388.

10:30AM 15 MR. LEACH: 801, YOUR HONOR, IF THIS IS BEING --

10:30AM 16 801. IF IT'S BEING OFFERED FOR A NONHEARSAY PURPOSE, I HAVE NO

10:30AM 17 OBJECTION.

10:30AM 18 MS. WALSH: IT'S A NONHEARSAY PURPOSE.

10:30AM 19 THE COURT: THE PURPOSE IS?

10:30AM 20 MS. WALSH: INFORMING MR. GROSSMAN IN WHAT HE IS

10:30AM 21 LEARNING ABOUT THERANOS AT THE TIME, WHICH ULTIMATELY INFORMS

10:30AM 22 HIS INVESTMENT DECISION.

10:30AM 23 THE COURT: BUT NOT FOR THE TRUTH OF WHAT IS

10:30AM 24 REPRESENTED HERE NOT FOR THE TRUTH OF THE INVESTMENT DECISION?

10:30AM 25 MS. WALSH: JUST ALL OF THE DATA THAT HE IS

10:30AM 1 GATHERING IN HIS DUE DILIGENCE PROCESS. WHETHER IT'S TRUE OR
10:30AM 2 NOT, IT'S THE INFORMATION THAT HE'S GATHERING, AND THAT
10:30AM 3 ULTIMATELY AFFECTS HIS INVESTMENT DECISION.

10:30AM 4 THE COURT: OKAY. LADIES AND GENTLEMEN, THIS WILL
10:30AM 5 BE ADMITTED, AGAIN, PREVIOUSLY AS I HAVE TOLD YOU ON MANY
10:31AM 6 ITEMS, NOT FOR THE TRUTH OF THE MATTER ASSERTED IN THE
10:31AM 7 DOCUMENT, BUT IT'S ADMITTED SOLELY FOR THE PURPOSE OF SHOWING
10:31AM 8 THE -- THIS WITNESS, MR. GROSSMAN'S, -THE INFORMATION THAT
10:31AM 9 MR. GROSSMAN RECEIVED PURSUANT TO THE TESTIMONY HERE. FOR THAT
10:31AM 10 LIMITED PURPOSE, IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:31AM 11 (DEFENDANT'S EXHIBIT 7388 WAS RECEIVED IN EVIDENCE.)

10:31AM 12 MS. WALSH: THANK YOU.

10:31AM 13 Q. OKAY. AND IF WE JUST GO DOWN TO THE LAST BULLET.

10:31AM 14 SO MS. GILL IS FORWARDING YOU RESEARCH ABOUT WALGREENS,
10:31AM 15 BUT THIS LAST BULLET RELATES TO THERANOS; IS THAT RIGHT?

10:31AM 16 A. I MEAN, SHE -- I GET HUNDREDS OF EMAILS LIKE THIS A DAY.
10:31AM 17 I'M ON HER EMAIL DISTRIBUTION LIST. SO, YOU KNOW, SHE'S NOT
10:31AM 18 FORWARDING IT TO ME. I'M ON A DISTRIBUTION LIST THAT BLASTS
10:31AM 19 OUT THOUSANDS OF PEOPLE EVERY TIME SHE WRITES A RESEARCH
10:31AM 20 REPORT.

10:31AM 21 Q. OKAY. SO SHE'S SENDING IT TO YOU, NOT FORWARDING IT TO
10:32AM 22 YOU; IS THAT WHAT YOU'RE SAYING?

10:32AM 23 A. YES.

10:32AM 24 Q. OKAY. AND WHAT SHE'S SENDING YOU IS HER RESEARCH ON
10:32AM 25 WALGREENS; RIGHT?

10:32AM 1 A. THEY HAD WHAT APPEARS TO BE AN ANNUAL SHAREHOLDER MEETING,
10:32AM 2 WHICH EVERY COMPANY, PUBLIC COMPANY DOES, AND THESE APPEAR TO
10:32AM 3 BE HER NOTES FROM THE ANNUAL SHAREHOLDERS MEETING.

10:32AM 4 Q. OKAY. SO IT'S HER NOTES FROM THE SHAREHOLDER MEETING
10:32AM 5 ABOUT -- OF WALGREENS; RIGHT?

10:32AM 6 A. YES.

10:32AM 7 Q. AND THE LAST BULLET THAT YOU JUST READ RELATES TO
10:32AM 8 THERANOS; CORRECT?

10:32AM 9 A. YES.

10:32AM 10 Q. OKAY. AND WHAT THAT LAST BULLET SAYS IS "MANAGEMENT
10:32AM 11 BELIEVES," AND "MANAGEMENT" REFERS TO WALGREENS; RIGHT?

10:32AM 12 A. YES.

10:32AM 13 Q. "MANAGEMENT BELIEVES THAT THE THERANOS RELATIONSHIP WILL
10:32AM 14 BE A GAME CHANGER. THE COMPANY INDICATED THAT THE LAB MARKET
10:32AM 15 THEY ARE TARGETING IS VALUED AT APPROXIMATELY \$60 BILLION. THE
10:32AM 16 PILOT IN PHOENIX IS GOING WELL, AND THE COMPANY DOES HAVE PLANS
10:33AM 17 TO ROLL IT OUT MORE BROADLY, ALTHOUGH MANAGEMENT NOTED THAT IT
10:33AM 18 WOULD BE MEASURED AS IT WANTS TO GET IT RIGHT. THE
10:33AM 19 RELATIONSHIP WITH THERANOS IS NOT EXCLUSIVE, BUT 'DEEPLY
10:33AM 20 PREFERRED.'"

10:33AM 21 DO YOU SEE THAT?

10:33AM 22 A. I DO.

10:33AM 23 Q. "WITH WALGREENS INDICATING THAT IT WOULD BE THE ONLY
10:33AM 24 OPTION IF PATIENTS WANTED TO GET A LAB TEST IN A RETAIL
10:33AM 25 PHARMACY."

10:33AM 1 DO YOU SEE THAT?

10:33AM 2 A. I DO.

10:33AM 3 Q. OKAY. AND IF WE COULD TURN TO 7387.

10:33AM 4 A. 7387?

10:33AM 5 Q. RIGHT. SO THIS IS AN EMAIL FROM MR. KHANNA.

10:33AM 6 DO YOU SEE THAT?

10:33AM 7 A. YES.

10:33AM 8 Q. TO YOU AND OTHERS; RIGHT?

10:34AM 9 A. YES.

10:34AM 10 Q. AND THE DATE IS JANUARY 9TH, 2014?

10:34AM 11 A. YES.

10:34AM 12 Q. OKAY. AND HE'S FORWARDING YOU A SNIPPET FROM THAT SAME

10:34AM 13 REPORT; RIGHT?

10:34AM 14 A. THAT APPEARS TO BE THE CASE, YES.

10:34AM 15 Q. OKAY.

10:34AM 16 YOUR HONOR, WE OFFER 7387 WITH THE SAME -- FOR THE SAME
10:34AM 17 PURPOSE?

10:34AM 18 MR. LEACH: WITH THAT LIMITATION, YOUR HONOR, NO
10:34AM 19 OBJECTION.

10:34AM 20 THE COURT: ALL RIGHT. THANK YOU.

10:34AM 21 LADIES AND GENTLEMEN, THIS IS ADMITTED NOT FOR THE TRUTH
10:34AM 22 OF THE MATTER ASSERTED, BUT FOR THE SAME REASONS THAT 7388 WAS
10:34AM 23 ADMITTED, THAT NOTICE AND THAT PURPOSE ONLY, AND IT MAY BE
10:34AM 24 PUBLISHED.

10:34AM 25 (DEFENDANT'S EXHIBIT 7387 WAS RECEIVED IN EVIDENCE.)

10:34AM 1 BY MS. WALSH:

10:34AM 2 Q. AND WE DON'T ACTUALLY NEED TO REREAD THE SAME THING, BUT

10:34AM 3 JUST THAT MR. KHANNA WAS FORWARDING YOU THE SAME INFORMATION;

10:34AM 4 CORRECT?

10:34AM 5 A. YES.

10:34AM 6 Q. OKAY. WE CAN TAKE THAT DOWN.

10:34AM 7 IF YOU CAN TURN TO 7390, MR. GROSSMAN.

10:35AM 8 A. OKAY.

10:35AM 9 Q. OKAY. THIS IS AN EMAIL BETWEEN YOU AND DR. RABODZEY;

10:35AM 10 CORRECT?

10:35AM 11 A. YES.

10:35AM 12 Q. AND THE DATE IS JANUARY 10TH, 2014; RIGHT?

10:35AM 13 A. YES.

10:35AM 14 Q. AND IT'S AN EMAIL ABOUT WHAT YOU WANT HIM TO DO IN THE

10:35AM 15 MEETING THAT IS SCHEDULED AT THERANOS IN JANUARY 2014; RIGHT?

10:35AM 16 A. JANUARY 10TH I THINK IS THE MEETING DAY, YES.

10:35AM 17 MS. WALSH: OKAY. YOUR HONOR, WE OFFER

10:35AM 18 EXHIBIT 7390.

10:35AM 19 MR. LEACH: NO OBJECTION.

10:35AM 20 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:35AM 21 (DEFENDANT'S EXHIBIT 7390 WAS RECEIVED IN EVIDENCE.)

10:35AM 22 BY MS. WALSH:

10:35AM 23 Q. SO STARTING ON THE BOTTOM, YOU EMAIL DR. RABODZEY ON

10:35AM 24 JANUARY 9TH, 2014, AND YOU SAY, "U READY TO GO DOWN TO THERANOS

10:35AM 25 TOMORROW?"

10:35AM 1 AND HE RESPONDS, "YES, I WILL MEET YOU THERE. WHY?

10:36AM 2 ANYTHING WE NEED?"

10:36AM 3 AND YOU RESPOND SAYING, "BRING YOU'RE A GAME. U ARE THE
10:36AM 4 TECHNICAL EXPERT."

10:36AM 5 DO YOU SEE THAT?

10:36AM 6 A. YES.

10:36AM 7 Q. AND "NEED U TO BE REALLY SKEPTICAL."

10:36AM 8 DO YOU SEE THAT?

10:36AM 9 A. I DO.

10:36AM 10 Q. AND DR. RABODZEY WAS YOUR TECHNICAL EXPERT ON THIS TEAM
10:36AM 11 THAT WAS DOING DUE DILIGENCE ON THERANOS; IS THAT RIGHT?

10:36AM 12 A. WE WANTED HIM TO FOCUS ON THE DATA, THE DATA, YES.

10:36AM 13 Q. THE SCIENTIFIC DATA; RIGHT?

10:36AM 14 A. YES.

10:36AM 15 Q. OKAY. AND HE HAD THE BACKGROUND TO DO THAT; CORRECT?

10:36AM 16 A. YES.

10:36AM 17 Q. OKAY. WE CAN TAKE THAT DOWN.

10:36AM 18 AND SO THAT MEETING IN JANUARY, THAT TOOK PLACE ON
10:36AM 19 JANUARY 10TH, 2014; RIGHT?

10:36AM 20 A. YES.

10:36AM 21 Q. AND DURING THAT MEETING, AT THAT POINT IN TIME, THERANOS
10:36AM 22 STILL ONLY HAD THREE OF ITS PATIENT SERVICE CENTERS IN THREE
10:36AM 23 WALGREENS; IS THAT RIGHT?

10:36AM 24 A. I BELIEVE THAT WAS RIGHT.

10:36AM 25 Q. THE ONE IN PALO ALTO; RIGHT?

10:37AM 1 A. YES.

10:37AM 2 Q. AND THE TWO IN ARIZONA; CORRECT?

10:37AM 3 A. I BELIEVE THAT'S THE CASE, YES.

10:37AM 4 Q. OKAY. IF YOU COULD TURN TO 7391.

10:37AM 5 A. OKAY.

10:37AM 6 Q. AND IS THIS AN EMAIL BETWEEN YOU AND YOUR TEAM MEMBERS,

10:37AM 7 RIGHT AFTER THE THERANOS MEETING, SHARING ALL OF YOUR VIEWS

10:37AM 8 ABOUT THE MEETING?

10:37AM 9 A. IF I COULD JUST HAVE A MINUTE TO REVIEW?

10:37AM 10 Q. SURE.

10:37AM 11 (PAUSE IN PROCEEDINGS.)

10:37AM 12 THE WITNESS: OKAY. YES.

10:38AM 13 MS. WALSH: YOUR HONOR, WE OFFER 7391.

10:38AM 14 MR. LEACH: NO OBJECTION.

10:38AM 15 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:38AM 16 (DEFENDANT'S EXHIBIT 7391 WAS RECEIVED IN EVIDENCE.)

10:38AM 17 BY MS. WALSH:

10:38AM 18 Q. SO GOING DOWN TO THE FIRST IN TIME EMAIL.

10:38AM 19 THIS IS DR. RABODZEY COMMUNICATING TO YOU, MR. GROSSMAN,

10:38AM 20 AND TO MR. KHANNA; RIGHT?

10:38AM 21 A. YES.

10:38AM 22 Q. AND TO MR. BALASURYAN; RIGHT?

10:38AM 23 A. YES.

10:38AM 24 Q. AND WHAT WAS HIS TAKE ON THE MEETING THAT YOU JUST HAD

10:38AM 25 WITH THERANOS; RIGHT?

10:38AM 1 A. I MEAN, I DIDN'T READ THE WHOLE -- ALL OF IT, BUT, YEAH,
10:38AM 2 THIS APPEARS TO BE HIS INITIAL IMPRESSIONS AFTER THE MEETING
10:38AM 3 THAT TOOK PLACE ON FRIDAY, JANUARY 10TH, 2014.

10:38AM 4 Q. OKAY. SO LET'S TAKE A LOOK AT SOME OF WHAT HE SAYS.
10:38AM 5 HE SAYS, "HI GUYS,
10:38AM 6 "MY TAKE ON THIS:
10:38AM 7 "EVERYTHING I'VE HEARD ABOUT TECHNOLOGY SOUNDS VERY GOOD,
10:39AM 8 BUT IT IS WORTH BOUNCING THIS OFF LABCORP AND QUEST AND CPHD."
10:39AM 9 DO YOU SEE THAT?

10:39AM 10 A. I DO.

10:39AM 11 Q. AND WHAT IS CPHD?

10:39AM 12 A. CPHD IS THE TICKER FOR A PUBLICLY TRADED MOLECULAR
10:39AM 13 DIAGNOSTICS COMPANY CALLED CEPHEID.

10:39AM 14 Q. OKAY.

10:39AM 15 A. THEY WERE ACTUALLY BASED PROBABLY ABOUT FIVE MILES FROM
10:39AM 16 HERE. THEY WERE ACQUIRED BY ANOTHER COMPANY CALLED DANAHER
10:39AM 17 ABOUT THREE OR FOUR YEARS AGO, FIVE YEARS AGO MAYBE.

10:39AM 18 Q. OKAY. AND HE SAYS, "IT IS WORTH BOUNCING THIS OFF GNMK."
10:39AM 19 DO YOU SEE THAT?

10:39AM 20 A. I DO.

10:39AM 21 Q. AND WHAT IS GNMK?

10:39AM 22 A. THAT IS ALSO A TICKER AND ANOTHER COMPANY IN THE MOLECULAR
10:39AM 23 DIAGNOSTICS SPACE. THE NAME OF THE COMPANY IS GENMARK.

10:39AM 24 Q. OKAY. SO DR. RABODZEY WANTS TO BOUNCE OFF WHAT HE HEARD
10:40AM 25 AT THE THERANOS MEETING OFF OF THESE OTHER PLAYERS IN THE

10:40AM 1 MARKET; CORRECT?

10:40AM 2 A. YES.

10:40AM 3 Q. AND THEN HE SAYS, "I AM NOT CONVINCED ON IP AND

10:40AM 4 COMPETITION -- PEOPLE WILL GO AFTER THEM AND I DON'T THINK THEY

10:40AM 5 CAN OWN THE SPACE."

10:40AM 6 DO YOU SEE THAT?

10:40AM 7 A. I DO.

10:40AM 8 Q. THEN IF YOU SKIP DOWN TO, "I THINK THEIR PROJECTIONS ARE A

10:40AM 9 BIT AGGRESSIVE."

10:40AM 10 DO YOU SEE THAT?

10:40AM 11 A. I DO SEE THAT.

10:40AM 12 Q. "FOR SPEED OF RAMP IN 2015"; RIGHT?

10:40AM 13 "AND BEYOND."

10:40AM 14 DO YOU SEE THAT?

10:40AM 15 A. I DO SEE THAT.

10:40AM 16 Q. OKAY. "BUT WITH EXCELLENT EXECUTION ARE DOABLE AND CAN BE

10:40AM 17 EXCEEDED."

10:40AM 18 AND THEN HE GOES ON TO SAY, "WHAT THEY ARE NOT ACCOUNTING

10:40AM 19 FOR IS THE PUSHBACK FROM HL," WHICH IS LABCORP, "AND DGX,"

10:40AM 20 WHICH IS QUEST; RIGHT?

10:40AM 21 A. YES.

10:40AM 22 Q. AND THOSE ARE THE TWO MAIN COMPETITORS; CORRECT?

10:40AM 23 A. THOSE ARE THE TWO MAIN COMPETITORS IN THE LAB SERVICES

10:41AM 24 BUSINESS, BUT THEY ALSO WERE GOING TO COMPETE AGAINST MOLECULAR

10:41AM 25 DIAGNOSTICS COMPANIES LIKE CEPHEID AND GENMARK AS WELL.

10:41AM 1 SO THEY WERE ALSO COMPETITORS.

10:41AM 2 Q. OKAY.

10:41AM 3 A. LABCORP -- THE ANSWER IS YES.

10:41AM 4 LABCORP AND QUEST WERE NOT THE ONLY COMPETITORS THAT
10:41AM 5 THERANOS WOULD HAVE. THEY WERE THE TWO LARGEST COMPETITORS IN
10:41AM 6 THE LAB SERVICES BUSINESS.

10:41AM 7 Q. UNDERSTOOD.

10:41AM 8 SO THEY WERE TWO OF THE COMPETITORS; IS THAT RIGHT?

10:41AM 9 A. IN THE RETAIL SETTING, YES.

10:41AM 10 Q. OKAY. AND THEN THE LAST BULLET DR. RABODZEY SAYS, "I
10:41AM 11 WOULD LIKE TO LOOK AT TECHNICAL STAFF THEY SHOULD SEND AND GET
10:41AM 12 SOME FEEDBACK FROM COMPETITION, BUT IT IS A QUESTION TO YOU ON
10:41AM 13 HOW MUCH CAPITAL YOU WANT TO TIE UP HERE -- WE WILL MAKE MONEY,
10:41AM 14 BUT HARD TO SAY WHEN AND WHETHER IT WILL BE A 30 PERCENT PLUS
10:41AM 15 RETURN PER YEAR I WOULD SEEK FROM A PRIVATE DEAL."

10:41AM 16 DO YOU SEE THAT?

10:41AM 17 A. YES.

10:41AM 18 Q. OKAY. AND THEN LET'S GO UP THE CHAIN TO YOUR REPLY TO
10:42AM 19 DR. RABODZEY.

10:42AM 20 AND WHAT YOU SAY IS, "CAN I GET EVERYBODY'S VIEWS ON THE
10:42AM 21 MEETING AND WHAT U THINK NEXT STEPS ARE?"

10:42AM 22 RIGHT?

10:42AM 23 A. YES.

10:42AM 24 Q. "LET'S TRY TO FIND A TIME TO DEBRIEF AS A GROUP. MAYBE WE
10:42AM 25 CAN FIND A TIME AFTER MORN CALL ON MONDAY, ALTHOUGH I SUSPECT

10:42AM 1 THAT'S NOT REALISTIC GIVEN JPM."

10:42AM 2 DO YOU SEE THAT?

10:42AM 3 A. I DO.

10:42AM 4 Q. AND YOU'RE REFERRING TO A CONFERENCE THAT WAS OCCURRING IN
10:42AM 5 JANUARY OF 2014; RIGHT?

10:42AM 6 A. YES.

10:42AM 7 Q. AND THAT CONFERENCE WAS SPONSORED BY JP MORGAN; IS THAT
10:42AM 8 RIGHT?

10:42AM 9 A. THAT'S CORRECT.

10:42AM 10 Q. AND IT RELATED TO THE HEALTH CARE SECTOR; CORRECT?

10:42AM 11 A. IT'S THE LARGEST HEALTH CARE CONFERENCE OF THE YEAR AND IT
10:42AM 12 HAPPENS TO BE IN SAN FRANCISCO EVERY JANUARY.

10:42AM 13 Q. OKAY. YOU SAY, "ON THE OTHER HAND THIS CONFERENCE WILL
10:42AM 14 GIVE US A CHANCE TO PROBE ALL OF THE RELEVANT COMPETITORS OVER
10:43AM 15 THE NEXT DAYS."

10:43AM 16 RIGHT?

10:43AM 17 A. YES.

10:43AM 18 Q. AND BECAUSE YOU'RE AT THE CONFERENCE; RIGHT?

10:43AM 19 A. CORRECT.

10:43AM 20 Q. AND YOU'RE ABLE TO TALK TO THE PLAYERS IN THE MARKET;
10:43AM 21 RIGHT?

10:43AM 22 A. GO TO THEIR PRESENTATIONS, YEAH, THAT SORT OF STUFF.

10:43AM 23 Q. AND YOU'RE ABLE TO TALK TO THE PLAYERS IN THE MARKET;
10:43AM 24 RIGHT?

10:43AM 25 A. OR LISTEN TO THEIR PRESENTATIONS. PROBABLY THAT'S THE

10:43AM 1 MORE REALISTIC. BUT, YES, WE DON'T HAVE MEETINGS WITH EVERY
10:43AM 2 ONE OF THE COMPANIES AT THE CONFERENCE, BUT THEY HAVE
10:43AM 3 PRESENTATIONS, THEIR WEBCAST, YOU CAN LISTEN TO THEM, AND THEY
10:43AM 4 DO Q AND A SESSIONS AND SOME OF THEM ARE RECORDED.

10:43AM 5 SO IT WAS JUST A GOOD OPPORTUNITY TO KIND OF GET
10:43AM 6 EVERYONE'S PERSPECTIVE ON THIS COMPETITOR REALLY DISRUPTIVE
10:43AM 7 TECHNOLOGY.

10:43AM 8 Q. OKAY. AND THEN LET'S CONTINUE UP THE CHAIN FROM
10:43AM 9 MR. KHANNA. HE PROVIDES HIS THOUGHTS AND HE SAYS, "I THINK
10:43AM 10 THEY HAVE DONE A LOT OF WORK."

10:43AM 11 AND HERE HE'S REFERRING TO THERANOS; RIGHT?

10:43AM 12 A. YES, I BELIEVE THAT'S RIGHT.

10:44AM 13 Q. "ON GETTING THEIR ASSAYS APPROVED AND MENU SEEMS MUCH
10:44AM 14 BROADER THAN MY INITIAL VIEWS.

10:44AM 15 "GREAT PARTNERS WALGREENS, SAFEWAY, DOD (STILL TO BE
10:44AM 16 SIZED)."

10:44AM 17 DO YOU SEE THAT?

10:44AM 18 A. I DO.

10:44AM 19 Q. AND THEN IF YOU GO DOWN, HALF WAY DOWN, "RISKS.

10:44AM 20 "IP AS YOU MENTIONED, EXECUTION WHEN YOU START COLLECTING
10:44AM 21 SAMPLES AND RUNNING THE TESTS IN A REGIONAL CENTER."

10:44AM 22 DO YOU SEE THAT?

10:44AM 23 A. I DO.

10:44AM 24 Q. AND RUNNING A TEST IN A REGIONAL CENTER IS THAT HUB AND
10:44AM 25 SPOKE MODEL; CORRECT?

10:44AM 1

A. YES.

10:44AM 2

Q. OKAY. AND THEN IF WE GO DOWN TO CONCLUSION, HE SAYS, "I

10:44AM 3

WOULD LIKE THEM TO PUT US IN TOUCH WITH UNITED FOR US TO

10:44AM 4

DETERMINE THE REASON FOR THE THERANOS SELECTION GIVEN THAT

10:44AM 5

LABCORP IS THEIR EXCLUSIVE LAB PARTNER."

10:44AM 6

DO YOU SEE THAT?

10:44AM 7

A. I DO.

10:44AM 8

Q. "WE CAN CHECK WITH OTHER HOSPITALS AT THE CONFERENCE IF

10:45AM 9

THEY VIEW LABS AS A PROFIT CENTER OR NOT?"

10:45AM 10

RIGHT?

10:45AM 11

A. YES, I SEE THAT.

10:45AM 12

Q. AND SO MR. KHANNA IS ALSO TALKING ABOUT SPEAKING WITH

10:45AM 13

PLAYERS DURING THAT CONFERENCE; RIGHT?

10:45AM 14

A. HE APPEARS TO THINK THAT HE'S GOING TO HAVE TIME TO TALK

10:45AM 15

TO OTHER HOSPITALS AT THE CONFERENCE, YES.

10:45AM 16

Q. AND MR. KHANNA SAYS IN THE LAST BULLET, "THIS IS ONE OF

10:45AM 17

THE MOST INTERESTING COMPANIES I HAVE MET AND IT ALL COMES DOWN

10:45AM 18

TO EXECUTION."

10:45AM 19

DO YOU SEE THAT?

10:45AM 20

A. I DO SEE THAT.

10:45AM 21

Q. OKAY. SO WE CAN TAKE THAT DOWN.

10:45AM 22

LET'S TURN TO EXHIBIT 4077, WHICH IS IN EVIDENCE. SO IF

10:45AM 23

WE CAN PULL THAT UP.

10:46AM 24

AND YOU TESTIFIED ABOUT THIS ON WEDNESDAY, AND THIS IS AN

10:46AM 25

EMAIL THAT STARTS ON JANUARY 10TH, 2014; RIGHT?

10:46AM 1 DO YOU SEE THAT ON THE SCREEN?

10:46AM 2 A. YES.

10:46AM 3 Q. OKAY. AND YOU THANKED MR. BALWANI FOR THE TIME THAT HE
10:46AM 4 SPENT WITH YOUR TEAM; RIGHT?

10:46AM 5 A. YES.

10:46AM 6 Q. IN THE LAST SENTENCE YOU SAY, "ONE THING THAT WOULD BE
10:46AM 7 ESPECIALLY HELPFUL TO OUR DUE DILIGENCE PROCESS IS HAVING
10:46AM 8 ACCESS TO THE FINANCIAL MODEL WE REVIEWED WITH YOU TODAY."

10:46AM 9 DO YOU SEE THAT?

10:46AM 10 A. I DO.

10:46AM 11 Q. BECAUSE IN THAT MEETING, HE REVIEWED A FINANCIAL MODEL
10:46AM 12 USING A LAPTOP; RIGHT?

10:46AM 13 A. I BELIEVE IT WAS ON A LAPTOP, YES.

10:46AM 14 Q. YEAH. AND MR. BALWANI RESPONDS ON PAGE 1 OF THE EXHIBIT,
10:47AM 15 AND HE SAYS, "BRYAN.

10:47AM 16 "ATTACHED PLEASE FIND A PDF WHICH IS A VERY CONFIDENTIAL
10:47AM 17 SLIDE DECK OF DISCUSSIONS WE HAD. IT ALSO INCLUDES A VERY
10:47AM 18 DETAILED SECTION ON DATA WHICH ALEX HAD REQUESTED."

10:47AM 19 THAT'S DR. RABODZEY; RIGHT?

10:47AM 20 A. YES.

10:47AM 21 Q. AND DR. RABODZEY WAS IN CHARGE OF LOOKING AT THAT DATA;
10:47AM 22 RIGHT?

10:47AM 23 A. YES.

10:47AM 24 Q. AND SO HE REQUESTED THAT HE GET THE DATA SO HE COULD LOOK
10:47AM 25 AT IT; CORRECT?

10:47AM 1 A. YES.

10:47AM 2 Q. AND MR. BALWANI COMPLIED WITH THAT REQUEST; CORRECT?

10:47AM 3 A. YES.

10:47AM 4 Q. AND HE SENT YOU THE SLIDE DECK; RIGHT?

10:47AM 5 A. YES.

10:47AM 6 Q. OKAY. AND THEN IF YOU GO DOWN ABOUT HALF WAY, MR. BALWANI

10:47AM 7 SAYS, "WE WILL MAIL YOU THE PROJECTIONS/FINANCIAL MODEL

10:47AM 8 SHORTLY."

10:47AM 9 DO YOU SEE THAT?

10:47AM 10 A. I DO.

10:47AM 11 Q. OKAY. AND YOU ULTIMATELY DO GET THAT MODEL; RIGHT?

10:47AM 12 A. YES.

10:47AM 13 Q. AND YOU GET A NATIVE COPY OF IT; RIGHT?

10:47AM 14 A. WHAT DO YOU MEAN BY "NATIVE"?

10:48AM 15 Q. IT WAS NOT A PDF THAT YOU GOT; CORRECT? YOU GOT A SOFT

10:48AM 16 COPY OF THE MODEL?

10:48AM 17 A. HE SENT US AN EXCEL FILE.

10:48AM 18 Q. YES.

10:48AM 19 A. THAT'S -- I DON'T KNOW IF THAT'S SOFT OR -- BUT IT WAS AN

10:48AM 20 EXCEL FILE THAT WAS PASSWORD PROTECTED, AND ONCE WE ENTERED THE

10:48AM 21 PASSWORD, WE WERE ABLE TO ACCESS THE MATERIAL IN THE

10:48AM 22 SPREADSHEET.

10:48AM 23 Q. RIGHT. SO HE SENT YOU THE ACTUAL EXCEL SPREADSHEET

10:48AM 24 ITSELF; RIGHT?

10:48AM 25 A. WHICH IS WHAT WE REQUESTED.

10:48AM 1 Q. RIGHT. AND HE COMPLIED WITH YOUR REQUEST; RIGHT?

10:48AM 2 A. HE DID, YES.

10:48AM 3 Q. OKAY. AND WHAT MR. BALWANI SAYS UNDER THE "PS" IS, "AT
10:48AM 4 THE CONFERENCE," AND HE'S REFERRING TO THE JP MORGAN
10:48AM 5 CONFERENCE; RIGHT? OR THAT WAS YOUR UNDERSTANDING?

10:48AM 6 A. YES, THAT IS MY UNDERSTANDING.

10:48AM 7 Q. OKAY. "THE INTERMOUNTAIN HEALTH SYSTEMS ANNOUNCED THE
10:48AM 8 STRATEGIC PARTNERSHIP WITH THERANOS."

10:49AM 9 DO YOU SEE THAT?

10:49AM 10 A. I DO.

10:49AM 11 Q. AND THAT HAPPENED AT THE CONFERENCE, DIDN'T IT?

10:49AM 12 A. YES.

10:49AM 13 Q. OKAY. "AS YOU MAY KNOW, IMH IS ONE OF THE LARGEST
10:49AM 14 HOSPITAL NETWORKS IN THE U.S. AND, MORE IMPORTANTLY, ONE OF THE
10:49AM 15 MOST RESPECTED ORGANIZATIONS AND KEY THOUGHT LEADERS.
10:49AM 16 INTERMOUNTAIN ADDITIONALLY PARTICIPATED AS AN EQUITY INVESTOR
10:49AM 17 IN THERANOS IN THE RECENT 2013 CLOSE."

10:49AM 18 DO YOU SEE THAT?

10:49AM 19 A. I DO, YES.

10:49AM 20 Q. SO MR. BALWANI WAS ALSO LETTING YOU KNOW THAT THERANOS HAD
10:49AM 21 ALSO RAISED MONEY AT THE END OF 2013; RIGHT?

10:49AM 22 A. YES, AND HE HAD ACTUALLY ALREADY TOLD US THAT.

10:49AM 23 Q. AND THEN --

10:49AM 24 A. HE HAD ALREADY DISCLOSED THAT TO US IN OUR, IN OUR MEETING
10:49AM 25 THAT TOOK PLACE A FEW DAYS BEFORE THAT ON DECEMBER 9TH OR 10TH,

10:49AM 1 OR 10TH -- I'M SORRY. A LOT OF DAYS AND MONTHS. JANUARY 10TH.

10:49AM 2 THE EMAIL THAT TOOK PLACE ON JANUARY 10TH. THIS EMAIL IS FROM

10:50AM 3 THE FOLLOWING WEEK. SO WE ALREADY KNEW THAT.

10:50AM 4 Q. AND HE TOLD YOU THAT; RIGHT?

10:50AM 5 A. YEAH, HE ALREADY TOLD US THAT.

10:50AM 6 Q. OKAY. AND THE SECOND BULLET REFERS TO WALGREENS

10:50AM 7 ANNOUNCEMENT, COMMENTS ON THERANOS BY THEIR CEO AND CFO.

10:50AM 8 DO YOU SEE THAT?

10:50AM 9 A. I DO.

10:50AM 10 Q. AND WHAT HE SAYS IS, "GREG (CEO) - IN OUR HISTORY BOOK

10:50AM 11 THIS WILL BE A CRAWL, WALK, RUN. WE HAVE LAUNCHED IN ONE STORE

10:50AM 12 IN PALO ALTO WHERE THERANOS IS LOCATED AND ARE BEGINNING A

10:50AM 13 ROLLOUT IN PHOENIX."

10:50AM 14 DO YOU SEE THAT?

10:50AM 15 A. I DO.

10:50AM 16 Q. AND SO LET'S TAKE A LOOK AT SOME OF THE SLIDES.

10:50AM 17 I KNOW MR. LEACH SHOWED YOU SOME. AND I WANT TO SHOW YOU

10:50AM 18 SOME AS WELL.

10:50AM 19 SO IF WE COULD TURN TO --

10:51AM 20 A. ARE YOU JUST GOING TO PUT THEM UP HERE?

10:51AM 21 Q. YES. I JUST HAVE TO GET THERE. PAGE 16 OF THE EXHIBIT.

10:51AM 22 SO THE TITLE OF THE SLIDE IS THERANOS PATIENT SERVICE

10:51AM 23 CENTERS.

10:51AM 24 DO YOU SEE THAT?

10:51AM 25 A. I DO.

10:51AM 1 Q. OKAY. AND WHAT IT SAYS IS, "THERANOS'S FOOTPRINT AT
10:51AM 2 RETAIL:
10:51AM 3 "THERANOS PATIENT SERVICE CENTERS ARE LOCATED WITHIN A
10:51AM 4 SMALLER RADIUS FROM THE PATIENT THAN CURRENTLY AVAILABLE."
10:51AM 5 DO YOU SEE THAT?
10:51AM 6 A. I DO.
10:51AM 7 Q. AND THAT PARAGRAPH IS WRITTEN IN THE PRESENT TENSE, IS IT
10:51AM 8 NOT.
10:51AM 9 A. YES.
10:51AM 10 Q. AND THEN THE NEXT PARAGRAPH SAYS, "THERANOS HAS MORE
10:51AM 11 PATIENT SERVICE CENTERS THAN ANY LAB PROVIDER IN CALIFORNIA."
10:52AM 12 DO YOU SEE THAT?
10:52AM 13 A. YES.
10:52AM 14 Q. AND THAT'S ALSO WRITTEN IN THE PRESENT TENSE; RIGHT?
10:52AM 15 A. YES.
10:52AM 16 Q. BUT YOU KNEW AT THIS TIME THAT THERANOS HAD ONLY THREE
10:52AM 17 PATIENT SERVICE CENTERS; CORRECT?
10:52AM 18 A. YES.
10:52AM 19 Q. AND, IN FACT, HAD ONLY ONE IN CALIFORNIA; RIGHT?
10:52AM 20 A. I BELIEVE THAT'S RIGHT.
10:52AM 21 Q. OKAY. LET'S NOW TURN TO PAGE 33.
10:52AM 22 33 THE TITLE IS COMMERCIAL.
10:52AM 23 DO YOU SEE THAT?
10:52AM 24 A. I DO.
10:52AM 25 Q. AND IT DESCRIBES KEY DEPLOYMENTS; RIGHT?

10:52AM 1

A. YES.

10:52AM 2

Q. AND IF YOU GO DOWN TO THE THIRD BULLET, THAT REFERS TO

10:53AM 3

"EMERGENCY ROOMS, HOSPITALS, AND PROVIDER OFFICES."

10:53AM 4

DO YOU SEE THAT?

10:53AM 5

A. I DO.

10:53AM 6

Q. BUT YOU KNEW THAT THERANOS WAS NOT IN EMERGENCY ROOMS AT

10:53AM 7

THE TIME; RIGHT?

10:53AM 8

A. I DON'T RECALL SPECIFICALLY WHAT WE WERE THINKING AT THAT

10:53AM 9

PARTICULAR DATE, BUT WE DEFINITELY EXPECTED THEM TO HAVE A

10:53AM 10

MAJOR PRESENCE IN HOSPITALS AND PROVIDE TESTING SERVICES TO

10:53AM 11

BOTH HOSPITALS ON AN OUTPATIENT BASIS, AND THEN ACTUALLY

10:53AM 12

REPLACE THE HOSPITAL LABORATORY.

10:53AM 13

Q. IN THE FUTURE; CORRECT?

10:53AM 14

A. LIKE I SAID, I DON'T REMEMBER SPECIFICALLY WHAT WE THOUGHT

10:53AM 15

AT THAT PARTICULAR POINT IN TIME.

10:53AM 16

Q. OKAY. LET'S GO DOWN TO THE NEXT BULLET. "INTERNATIONAL

10:53AM 17

HEALTH CARE INFRASTRUCTURE."

10:53AM 18

DO YOU SEE THAT?

10:53AM 19

A. I DO.

10:53AM 20

Q. BUT YOU KNEW AT THE TIME THAT THERANOS WAS NOT OPERATING

10:53AM 21

INTERNATIONALLY; RIGHT?

10:53AM 22

A. WE DID KNOW THAT.

10:54AM 23

Q. OKAY. AND THEN GOING DOWN TO "INFECTIOUS DISEASE AND

10:54AM 24

POPULATION THREATS."

10:54AM 25

DO YOU SEE THAT?

10:54AM 1 A. I DO.

10:54AM 2 Q. AND YOU KNEW THAT THERANOS WAS NOT ROLLING OUT ANYTHING

10:54AM 3 RELATED, AT THIS TIME, RELATED TO INFECTIOUS DISEASE AND

10:54AM 4 POPULATION THREATS; RIGHT?

10:54AM 5 A. I DON'T BELIEVE THAT'S RIGHT.

10:54AM 6 Q. OKAY. LET'S GO DOWN TO DOD.

10:54AM 7 DO YOU SEE THAT?

10:54AM 8 A. I DO.

10:54AM 9 Q. YOU KNEW AT THE TIME THAT THERANOS -- OR YOU CAME TO LEARN

10:54AM 10 THAT THERANOS WAS NOT PROJECTING ANY REVENUE FROM ANY

10:54AM 11 DEPARTMENT OF DEFENSE PROJECT AT THAT TIME?

10:54AM 12 A. NO, THAT'S NOT CORRECT.

10:54AM 13 Q. OKAY. SO WE'LL TAKE A LOOK AT THE MODEL, AND WE'LL COME

10:54AM 14 BACK TO THAT POINT.

10:55AM 15 A. OKAY.

10:55AM 16 Q. LET'S LOOK AT PAGE 34.

10:55AM 17 THIS IS TITLED THERANOS INFRASTRUCTURE.

10:55AM 18 DO YOU SEE THAT?

10:55AM 19 A. YES.

10:55AM 20 Q. AND IT SAYS, "NATIONAL RETAIL FOOTPRINT AND HEALTH PLAN

10:55AM 21 PARTNERSHIPS THROUGHOUT THE UNITED STATES FOR AN UNPRECEDENTED

10:55AM 22 INFRASTRUCTURE WHICH EXCEEDS THAT OF A COMMERCIAL LABORATORY IN

10:55AM 23 TODAY'S MARKET."

10:55AM 24 DO YOU SEE THAT?

10:55AM 25 A. I DO.

10:55AM 1 Q. BUT YOU KNEW AT THE TIME THAT THERANOS'S RETAIL FOOTPRINT
10:55AM 2 AT THAT TIME DID NOT EXCEED THAT OF ANY COMMERCIAL LABORATORY
10:55AM 3 IN TODAY'S MARKET; RIGHT?

10:55AM 4 A. ARE YOU REFERRING TO THE DATE HE EMAILED THIS
10:55AM 5 PRESENTATION?

10:55AM 6 Q. YEAH.

10:55AM 7 A. THE DATE HE EMAILED THIS, YEAH, WE KNEW THAT THEY JUST
10:56AM 8 STARTED THE COMMERCIAL ROLLOUT.

10:56AM 9 Q. RIGHT. SO THIS STATEMENT IS NOT INDICATIVE OF WHAT
10:56AM 10 CURRENTLY EXISTED; RIGHT?

10:56AM 11 A. WELL, I GUESS IT DOESN'T REFER TO THE JANUARY 12TH, WHEN
10:56AM 12 HE SENT US THIS PRESENTATION.

10:56AM 13 I THINK IT'S MORE REFERRING TO WHAT THEY EXPECTED THE
10:56AM 14 BUSINESS TO LOOK LIKE OVER THE NEXT COUPLE OF MONTHS.

10:56AM 15 Q. SO IT WAS FUTURE LOOKING; CORRECT?

10:56AM 16 A. I THINK IT WAS A REPRESENTATION OF WHAT THE BUSINESS
10:56AM 17 EXPECTED THEIR BUSINESS TO LOOK LIKE, YES.

10:56AM 18 Q. OKAY. AND IF WE LOOK AT SLIDE 35, DO YOU SEE THAT?

10:56AM 19 A. I DO.

10:56AM 20 Q. THAT'S THE MAP OF ALL OF THE WALGREENS STORES ALL OVER THE
10:56AM 21 COUNTRY; RIGHT?

10:56AM 22 A. YEAH. IT SEEMS LIKE A LOT OF WALGREENS STORES, BUT YEAH.

10:56AM 23 (LAUGHTER.)

10:56AM 24 BY MS. WALSH:

10:56AM 25 Q. IT'S A LOT OF STORES; RIGHT?

10:56AM 1 A. THERE'S NOTHING ELSE YOU COULD FIT IN THERE.

10:56AM 2 Q. RIGHT. IT'S A CROWDED MAP; CORRECT?

10:56AM 3 AND THE TITLE IS THERANOS INFRASTRUCTURE AT WALGREENS;

10:57AM 4 RIGHT?

10:57AM 5 A. YES, THAT IS THE TITLE.

10:57AM 6 Q. BUT YOU KNEW THAT THERANOS WAS NOT IN ALL OF THESE

10:57AM 7 WALGREENS STORES; CORRECT?

10:57AM 8 A. AT THAT POINT IN TIME ON JANUARY 12TH, YES, WE KNEW THAT.

10:57AM 9 Q. JUST ONE MORE ON PAGE 61. THE TITLE OF THIS SLIDE IS THE

10:57AM 10 THERANOS LAB.

10:57AM 11 DO YOU SEE THAT?

10:57AM 12 A. I DO.

10:57AM 13 Q. AND THE FIRST PARAGRAPH SAYS, "PATIENT SERVICE CENTERS."

10:57AM 14 RIGHT?

10:57AM 15 A. YES.

10:57AM 16 Q. AND "PATIENT SERVICE CENTERS ALLOW FOR CONVENIENT PATIENT

10:57AM 17 ACCESS TO LABORATORY COLLECTION SITES, FAR EXCEEDING CURRENT

10:58AM 18 INDEPENDENT LABORATORY FOOTPRINTS."

10:58AM 19 DO YOU SEE THAT?

10:58AM 20 A. I DO.

10:58AM 21 Q. AND AT THIS POINT IN TIME IN JANUARY OF 2014, THERANOS'S

10:58AM 22 COLLECTION SITES DID NOT FAR EXCEED INDEPENDENT LAB FOOTPRINTS;

10:58AM 23 IS THAT RIGHT?

10:58AM 24 A. ON JANUARY 12TH, THAT IS CORRECT, OF 2014, THAT IS

10:58AM 25 CORRECT.

10:58AM 1 Q. OKAY. LET'S PULL UP 1454, WHICH IS IN EVIDENCE.

10:59AM 2 DO YOU SEE THAT?

10:59AM 3 A. I DO.

10:59AM 4 Q. OKAY. ALL RIGHT. SO IF WE COULD TURN TO PAGE 2 OF THAT

10:59AM 5 EXHIBIT AND LOOK AT THE MIDDLE EMAIL, YOU WRITE TO MR. BALWANI

10:59AM 6 ON JANUARY 17TH, "SUNNY.

10:59AM 7 "THANKS FOR THE MATERIALS AND CONGRATS ON THE

10:59AM 8 INTERMOUNTAIN DEAL."

10:59AM 9 DO YOU SEE THAT?

10:59AM 10 A. I DO.

10:59AM 11 Q. AND THAT'S THE DEAL THAT WE WERE JUST REFERRING TO; RIGHT?

10:59AM 12 A. YES.

10:59AM 13 Q. AND THAT WAS ANNOUNCED AT THE JP MORGAN HEALTH CARE

10:59AM 14 CONFERENCE; IS THAT CORRECT?

10:59AM 15 A. IT APPEARS TO BE, YEAH.

10:59AM 16 Q. OKAY. SORRY. GO AHEAD.

10:59AM 17 A. I DON'T RECALL SPECIFICALLY, BUT I THINK THAT WAS -- I

11:00AM 18 THINK THAT'S PROBABLY RIGHT.

11:00AM 19 Q. OKAY. AND YOU GO ON TO SAY, "THAT'S A GREAT VALIDATION

11:00AM 20 FOR THE TECHNOLOGY AND THE COMPANY. I WAS WONDERING IF YOU

11:00AM 21 HAVE ANY TIME NEXT WEEK FOR A FOLLOW-UP MEETING. WE HAVE A FEW

11:00AM 22 AREAS WE'D LIKE TO FOLLOW UP ON."

11:00AM 23 DO YOU SEE THAT?

11:00AM 24 A. YES.

11:00AM 25 Q. OKAY. AND THEN IF WE GO UP THE CHAIN, MR. BALWANI

11:00AM 1 RESPONDS -- I'M SORRY.

11:00AM 2 IF WE GO UP THE CHAIN TO JANUARY 22ND AT 5:31 A.M., YOU
11:00AM 3 WRITE TO MR. BALWANI, "THANKS AGAIN FOR THE TIME YESTERDAY."
11:00AM 4 RIGHT?

11:00AM 5 A. YES.

11:00AM 6 Q. "I THINK WE'VE ANSWERED THE MAJORITY OF OUR OPEN QUESTIONS
11:00AM 7 AND HAVE JUST A FEW REMAINING ISSUES TO ADDRESS. WE WOULD LIKE
11:00AM 8 TO ADD A FEW CONSULTANTS TO THE NDA AS WE DISCUSSED YESTERDAY.
11:00AM 9 WE'D ALSO LIKE TO SPEAK WITH SOMEBODY, IF THEY ARE OPEN TO IT,
11:01AM 10 FROM UNITED HEALTH CARE."

11:01AM 11 DO YOU SEE THAT?

11:01AM 12 A. YES.

11:01AM 13 Q. AND YOU TESTIFIED ON WEDNESDAY ABOUT YOUR WANTING TO TALK
11:01AM 14 TO SOMEONE FROM UNITED HEALTH CARE; RIGHT?

11:01AM 15 A. YES.

11:01AM 16 Q. BECAUSE YOUR UNDERSTANDING WAS THERANOS HAD A CONTRACT
11:01AM 17 WITH UNITED HEALTH CARE; CORRECT?

11:01AM 18 A. THAT IS WHAT MR. -- THAT IS WHAT THE COMPANY TOLD US IN
11:01AM 19 THE SECOND MEETING ON DECEMBER 9TH, YES.

11:01AM 20 Q. AND YOU TESTIFIED THAT MR. BALWANI WASN'T COMFORTABLE WITH
11:01AM 21 HAVING YOU TALK WITH SOMEONE FROM UNITED HEALTH CARE; RIGHT?

11:01AM 22 A. THAT IS RIGHT.

11:01AM 23 Q. OKAY. AND MR. BALWANI OFFERED TO SHOW YOU THE CONTRACT
11:01AM 24 ITSELF; CORRECT?

11:01AM 25 A. I BELIEVE HE OFFERED TO SHOW US THE SIGNATURE PAGES OF THE

11:01AM 1 CONTRACT, BUT -- SO I GUESS THAT WOULD BE A NO.

11:01AM 2 BUT KIND OF A YES.

11:01AM 3 Q. OKAY. AND YOU SAW, AT THE VERY LEAST, YOU SAW THE
11:01AM 4 SIGNATURE PAGE, RIGHT, OF THE CONTRACT?

11:02AM 5 A. HE DID, HE DID SHOW -- I DO RECALL SEEING THE SIGNATURE
11:02AM 6 PAGE, YES.

11:02AM 7 Q. OKAY.

11:02AM 8 MAY I APPROACH, YOUR HONOR?

11:02AM 9 THE COURT: YES.

11:02AM 10 MS. WALSH: (HANDING.)

11:02AM 11 Q. DO YOU SEE WHAT HAS BEEN MARKED AS EXHIBIT 20812,
11:02AM 12 MR. GROSSMAN?

11:02AM 13 A. I DO.

11:02AM 14 Q. AND IF YOU TURN TO PAGE 19 OF THAT EXHIBIT.

11:03AM 15 DO YOU SEE THAT?

11:03AM 16 A. I DO.

11:03AM 17 Q. AND THAT'S THE SIGNATURE PAGE THAT MR. BALWANI SHOWED YOU;
11:03AM 18 RIGHT?

11:03AM 19 A. I DON'T RECALL SPECIFICALLY.

11:03AM 20 Q. WELL, YOU RECALL SEEING A CONTRACT, THAT SIGNATURE PAGE ON
11:03AM 21 A CONTRACT WITH UNITED HEALTH CARE; RIGHT?

11:03AM 22 A. I REMEMBER SEEING SOMETHING -- SOME TYPE OF SIGNATURE, A
11:03AM 23 DOCUMENT IN A FOLDER, BUT I DON'T, I DON'T REMEMBER
11:03AM 24 SPECIFICALLY -- I DON'T HAVE A VIVID MEMORY OF THE DOCUMENT.

11:03AM 25 Q. OKAY. BUT YOU SEE MR. BALWANI'S SIGNATURE; CORRECT?

11:03AM 1 A. I SEE MR. BALWANI'S SIGNATURE HERE, YES.

11:03AM 2 Q. AND YOU SEE IT'S DATED JANUARY 11TH, 2013; RIGHT?

11:03AM 3 A. I DO, YEP.

11:03AM 4 Q. AND YOU SEE A SIGNATURE FOR UNITED HEALTH CARE INSURANCE

11:03AM 5 COMPANY; RIGHT?

11:03AM 6 A. YES.

11:03AM 7 Q. AND YOU SEE THAT THAT SIGNATURE IS DATED JANUARY 26TH,

11:04AM 8 2013?

11:04AM 9 A. YES.

11:04AM 10 Q. OKAY. AND IS IT YOUR TESTIMONY THAT YOU DON'T RECALL

11:04AM 11 WHETHER THIS IS THE SIGNATURE PAGE THAT MR. BALWANI SHOWED YOU?

11:04AM 12 A. I DON'T RECALL.

11:04AM 13 Q. OKAY. YOU CAN PUT THAT ASIDE.

11:04AM 14 IF YOU CAN TURN TO EXHIBIT 14002.

11:04AM 15 A. OKAY.

11:04AM 16 Q. AND THAT'S AN EMAIL BETWEEN YOU AND YOUR TEAM; RIGHT?

11:05AM 17 A. YES.

11:05AM 18 Q. AND IT'S ON JANUARY 15TH, 2014; RIGHT?

11:05AM 19 A. YES.

11:05AM 20 Q. AND IT'S AN EMAIL DISCUSSING THERANOS; CORRECT?

11:05AM 21 A. YES.

11:05AM 22 MS. WALSH: YOUR HONOR, WE OFFER 14002.

11:05AM 23 MR. LEACH: NO OBJECTION, YOUR HONOR.

11:05AM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:05AM 25 (DEFENDANT'S EXHIBIT 14002 WAS RECEIVED IN EVIDENCE.)

11:05AM 1 BY MS. WALSH:

11:05AM 2 Q. SO THIS IS DR. RABODZEY EMAILING MR. KHANNA AND YOU ON
11:05AM 3 JANUARY 15TH, 2014, AND THE SUBJECT IS MDX AND FDA.

11:05AM 4 DO YOU SEE THAT?

11:05AM 5 A. I DO.

11:05AM 6 Q. OKAY. AND DR. RABODZEY SAYS IN THE EMAIL, "I CHECKED WITH
11:05AM 7 NSTG."

11:05AM 8 DO YOU SEE THAT?

11:05AM 9 A. I DO.

11:05AM 10 Q. AND THAT'S NANOSTRING TECHNOLOGIES; CORRECT?

11:05AM 11 A. THAT'S THE TICKER -- THAT IS RIGHT.

11:05AM 12 Q. AND THAT'S A BIOTECH COMPANY; CORRECT?

11:06AM 13 A. IT'S A MOLECULAR DIAGNOSTICS. IT'S A TESTING COMPANY,
11:06AM 14 DIAGNOSTICS COMPANY.

11:06AM 15 Q. OKAY.

11:06AM 16 A. THAT -- YEAH, THAT -- AND THAT'S THE STOCK TICKER SYMBOL.

11:06AM 17 Q. OKAY. AND DR. RABODZEY SAYS, "SO I CHECKED WITH NSTG, AND
11:06AM 18 THEY DID CONFIRM THAT A DEVICE USED FOR TESTING OUTSIDE OF THE
11:06AM 19 CLIA LAB HAS TO BE FDA CLEARED."

11:06AM 20 DO YOU SEE THAT?

11:06AM 21 A. I DO.

11:06AM 22 Q. "THIS WOULD APPLY TO THERANOS IF AND WHEN THEY DECIDE TO
11:06AM 23 MOVE THE DEVICE OUT OF THE CLIA LAB.

11:06AM 24 "NOT A BIG DEAL IN MY VIEW, BUT SOMETHING TO KEEP IN
11:06AM 25 MIND."

11:06AM 1 DO YOU SEE THAT?

11:06AM 2 A. I DO.

11:06AM 3 Q. SO DR. RABODZEY IS RAISING THE ISSUE OF THE FDA REQUIRING
11:06AM 4 THERANOS TO GET SOME SORT OF CLEARANCE OR APPROVAL TO MOVE THE
11:07AM 5 DEVICE OUTSIDE OF THE LAB; IS THAT CORRECT?

11:07AM 6 A. I THINK HE'S RAISING THIS AS A POSSIBILITY, BUT OBVIOUSLY
11:07AM 7 WE DON'T KNOW AT THIS POINT IN TIME WHAT THE FDA IS GOING TO
11:07AM 8 DO, AND THE COMPANY HAD A VERY DIFFERENT PERSPECTIVE ON THE
11:07AM 9 REGULATORY PROCESS.

11:07AM 10 Q. OKAY. SO LET'S TURN TO 7399.

11:07AM 11 A. I'M NOT SURE I HAVE THAT.

11:07AM 12 THE COURT: 7399?

11:07AM 13 MS. WALSH: 7399. NOT THERE?

11:07AM 14 THE WITNESS: NO.

11:08AM 15 MS. WALSH: OKAY. WE WILL BACK TO THAT.

11:08AM 16 Q. OKAY. LET'S TURN TO 7400.

11:08AM 17 DO YOU SEE 7400?

11:08AM 18 A. I DO.

11:08AM 19 Q. OKAY. AND 7400 IS AN EMAIL FROM SHELLEY SMITH TO
11:08AM 20 MR. KHANNA.

11:08AM 21 DO YOU SEE THAT ON THE TOP?

11:09AM 22 A. OH, YES. SORRY.

11:09AM 23 Q. OKAY. AND WHO WAS SHELLEY SMITH?

11:09AM 24 A. SHE WAS AN ADMINISTRATIVE ASSISTANT THAT WORKED WITH
11:09AM 25 MR. KHANNA.

11:09AM 1 Q. OKAY. AND THE DATE OF THE EMAIL IS JANUARY 23RD, 2014;
11:09AM 2 RIGHT?
11:09AM 3 A. YES.
11:09AM 4 Q. AND IT -- THIS IS AN EMAIL WHERE MR. KHANNA IS LOOKING
11:09AM 5 INTO HAVING A CONSULTATION WITH SOMEONE WHO KNOWS ABOUT
11:09AM 6 LABORATORY DEVELOPED TESTS; IS THAT RIGHT?
11:09AM 7 A. MAYBE I COULD JUST REVIEW THE FILE HERE.
11:09AM 8 Q. SURE.
11:09AM 9 (PAUSE IN PROCEEDINGS.)
11:09AM 10 THE WITNESS: YES.
11:09AM 11 BY MS. WALSH:
11:09AM 12 Q. OKAY. AND PFM WAS TRYING TO CONSULT WITH PEOPLE ABOUT
11:09AM 13 LABORATORY DEVELOPED TESTS IN CONNECTION WITH A POTENTIAL
11:09AM 14 INVESTMENT IN THERANOS; IS THAT RIGHT?
11:09AM 15 A. YES.
11:09AM 16 Q. OKAY. AND THIS IS AN EMAIL IN FURTHERANCE OF TRYING TO
11:10AM 17 CONSULT WITH AN EXPERT ON THAT?
11:10AM 18 A. YES.
11:10AM 19 MS. WALSH: YOUR HONOR, WE OFFER 7400.
11:10AM 20 MR. LEACH: NO OBJECTION, YOUR HONOR.
11:10AM 21 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
11:10AM 22 (DEFENDANT'S EXHIBIT 7400 WAS RECEIVED IN EVIDENCE.)
11:10AM 23 BY MS. WALSH:
11:10AM 24 Q. OKAY. SO MS. SMITH SAYS TO A PERSON NAMED ALEX, "A
11:10AM 25 CONSULTATION IS CONFIRMED WITH ANAND AKERKAR ON LABORATORY

11:10AM 1 DEVELOPED TESTS."

11:10AM 2 DO YOU SEE THAT?

11:10AM 3 A. I DO.

11:10AM 4 Q. AND THE BIO FOR DR. AKERKAR IS THAT HE, AND IT'S LAID OUT

11:10AM 5 IN THE EMAIL, IS THAT HE'S THE PRESIDENT AND CEO OF MDI

11:10AM 6 CONSULTANTS.

11:10AM 7 DO YOU SEE THAT?

11:10AM 8 A. I DO.

11:10AM 9 Q. AND THAT'S A FIRM THAT "PROVIDES QUALITY ASSURANCE,

11:10AM 10 REGULATORY AND CLINICAL SERVICES TO THE MEDICAL DEVICE,

11:10AM 11 PHARMACEUTICAL, AND FOOD INDUSTRIES."

11:10AM 12 RIGHT?

11:10AM 13 A. YES.

11:11AM 14 Q. AND A LITTLE FURTHER IT SAYS, "MDI'S SERVICES INCLUDE:

11:11AM 15 FDA REGULATORY STRATEGY DEVELOPMENT."

11:11AM 16 RIGHT?

11:11AM 17 A. YES.

11:11AM 18 Q. "CLINICAL TRIAL DEVELOPMENT."

11:11AM 19 CORRECT?

11:11AM 20 A. YES.

11:11AM 21 Q. AND THEN A LITTLE FURTHER DOWN IT SAYS, "DR. AKERKAR HAS

11:11AM 22 40 YEARS OF EXPERIENCE IN THE HEALTH CARE INDUSTRY."

11:11AM 23 RIGHT?

11:11AM 24 A. YES.

11:11AM 25 Q. OKAY. AND THEN THERE ARE TWO SCREENING QUESTIONS THERE IN

11:11AM 1 THE EMAIL. THE FIRST ONE IS, "ARE YOU FAMILIAR WITH AND ABLE
11:11AM 2 TO DISCUSS THE REQUIREMENTS THAT ARE NEEDED FOR LABORATORY
11:11AM 3 DEVELOPED TESTS?"

11:11AM 4 DO YOU SEE THAT?

11:11AM 5 A. YES.

11:11AM 6 Q. AND FOR LABORATORY DEVELOPED TESTS TO BE CLIA CERTIFIED;
11:11AM 7 RIGHT?

11:11AM 8 A. YES.

11:11AM 9 Q. AND HIS RESPONSE IS "I WROTE THE CLIA MANUAL FOR USERS OF
11:11AM 10 IVD TESTS AND QUITE FAMILIAR WITH ITS REGULATIONS."

11:11AM 11 DO YOU SEE THAT?

11:11AM 12 A. I DO.

11:11AM 13 Q. AND THEN THE SECOND QUESTION IS, "PLEASE DESCRIBE ANY
11:11AM 14 EXPERIENCE YOU HAVE SUBMITTING THESE TESTS FOR APPROVAL OR
11:11AM 15 EVALUATING THESE TESTS FOR FDA AND/OR CLIA APPROVAL AND
11:12AM 16 CERTIFICATION."

11:12AM 17 DO YOU SEE THAT?

11:12AM 18 A. I DO.

11:12AM 19 Q. AND HE RESPONDED, "WE HAVE GUIDED SEVERAL OF OUR CLIENTS
11:12AM 20 TO GET CLIA WAIVER."

11:12AM 21 RIGHT?

11:12AM 22 A. YES.

11:12AM 23 Q. SO IN THE PROCESS OF DOING YOUR DUE DILIGENCE ON THERANOS,
11:12AM 24 YOU WERE CONSULTING WITH EXPERTS IN THE FIELD TO GET ADVICE;
11:12AM 25 RIGHT?

11:12AM 1 A. YES.

11:12AM 2 Q. AND THIS IS ONE OF THOSE EXPERTS?

11:12AM 3 A. YES.

11:12AM 4 Q. OKAY. IF WE CAN TURN TO 20662.

11:12AM 5 THE COURT: WHILE WE DO THAT, FOLKS, WHY DON'T YOU

11:12AM 6 STAND UP AND STRETCH FOR A MOMENT.

11:12AM 7 THE WITNESS: I'M SORRY. WHAT WAS THE NUMBER?

11:12AM 8 MS. WALSH: 20662.

11:12AM 9 (STRETCHING.)

11:13AM 10 MS. WALSH: MAY I PROCEED, YOUR HONOR?

11:13AM 11 THE COURT: YES.

11:13AM 12 MS. WALSH: BEFORE WE GO TO 20662, I HAVE LOCATED

11:13AM 13 THE MISSING EXHIBIT.

11:13AM 14 SO MAY I APPROACH, YOUR HONOR?

11:13AM 15 THE COURT: YES.

11:13AM 16 MS. WALSH: (HANDING.)

11:14AM 17 Q. OKAY. SO, MR. GROSSMAN, DO YOU HAVE EXHIBIT 7399 IN FRONT

11:14AM 18 OF YOU?

11:14AM 19 A. I DO.

11:14AM 20 Q. OKAY. AND IS 7399 AN EMAIL FROM DR. RABODZEY TO YOU AND

11:14AM 21 MR. KHANNA?

11:14AM 22 A. YES.

11:14AM 23 Q. AND THE DATE OF THAT EMAIL IS JANUARY 21ST, 2014; CORRECT?

11:14AM 24 A. YES.

11:14AM 25 Q. AND THIS IS A COMMUNICATION FROM DR. RABODZEY TO YOU AND

11:14AM 1 MR. KHANNA ABOUT SOME RESEARCH HE HAD BEEN DOING IN CONNECTION
11:14AM 2 WITH THE THERANOS INVESTMENT; CORRECT?
11:14AM 3 A. I HAVEN'T READ IT. BUT DO YOU WANT ME TO READ THROUGH THE
11:14AM 4 EMAIL?
11:14AM 5 Q. SURE. TO ANSWER THAT QUESTION, SURE.
11:14AM 6 A. OKAY.
11:14AM 7 (PAUSE IN PROCEEDINGS.)
11:15AM 8 A. OKAY.
11:15AM 9 Q. SO IS THAT AN EMAIL FROM DR. RABODZEY TO YOU ABOUT THE
11:15AM 10 THERANOS INVESTMENT?
11:15AM 11 A. YES.
11:15AM 12 MS. WALSH: OKAY. YOUR HONOR, WE OFFER 7399.
11:15AM 13 MR. LEACH: NO OBJECTION, YOUR HONOR.
11:15AM 14 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.
11:15AM 15 (DEFENDANT'S EXHIBIT 7399 WAS RECEIVED IN EVIDENCE.)
11:15AM 16 BY MS. WALSH:
11:15AM 17 Q. SO, DR. RABODZEY SAYS, "HI GUYS."
11:15AM 18 AND THIS IS TO YOU AND MR. KHANNA.
11:15AM 19 "I DID SOME MORE READING ON THE CLIA REQUIREMENTS?"
11:16AM 20 AND THE CLIA REQUIREMENTS ARE THE REGULATIONS THAT APPLY
11:16AM 21 TO BLOOD TESTING LABS; CORRECT?
11:16AM 22 A. I BELIEVE IT'S ANY LABORATORY THAT WANTS TO BILL THE
11:16AM 23 FEDERAL GOVERNMENT, EITHER MEDICARE OR MEDICAID PROGRAMS HAVE
11:16AM 24 TO MEET THE CLIA STANDARDS WHICH WERE LAID OUT IN THE LAW FROM
11:16AM 25 THE LATE 1980S.

11:16AM 1 Q. AND DR. RABODZEY SAYS, "I DID SOME MORE READING ON THE
11:16AM 2 CLIA REQUIREMENTS, AND THERANOS SEEMS TO BE CORRECT THAT THE
11:16AM 3 CLIA CERTIFICATION DOES MEAN THAT THEIR TESTS MET A CERTAIN
11:16AM 4 LEVEL OF ACCURACY.

11:16AM 5 "THIS MAY OR MAY NOT BE SUFFICIENT TO MEET FDA CRITERIA,
11:16AM 6 BUT I HAVE NO REASON TO BELIEVE IT WON'T.

11:16AM 7 "I ASKED GPG FOR TWO CONSULTANTS: ONE PERSON WHO
11:16AM 8 DEVELOPED LAB TESTS IN THE PAST AND CAN HELP EVALUATE THE
11:16AM 9 TECHNOLOGY AND ANOTHER PERSON WHO UNDERSTANDS CLIA AND FDA
11:16AM 10 REGULATIONS TO EVALUATE THE REQUIREMENTS THAT THERANOS HAD TO
11:17AM 11 MEET TO GET CLIA CERTIFICATION."

11:17AM 12 DO YOU SEE THAT?

11:17AM 13 A. I DO.

11:17AM 14 Q. AND THEN DR. RABODZEY GOES ON TO SAY, "ON THIS WHOLE
11:17AM 15 PHASE II STRATEGY," AND THAT'S A STRATEGY OF PUTTING THE
11:17AM 16 DEVICES IN THE STORES; IS THAT RIGHT?

11:17AM 17 A. THAT'S FOR THE U.S. RETAIL, YES.

11:17AM 18 Q. SO PUTTING THE DEVICES IN THE STORE?

11:17AM 19 A. IN THE U.S. RETAIL SETTING, YES.

11:17AM 20 Q. "I WOULD STICK TO THE VIEW SHARED BY THE LAWYERS WE SPOKE
11:17AM 21 WITH THAT THE FDA WILL WANT TO REGULATE TESTING AND WILL NOT
11:17AM 22 BUY INTO THIS IDEA OF CLOUD DATA, SO THEY WILL HAVE TO GET THE
11:17AM 23 DEVICE APPROVED BY THE FDA AND/OR THEY MAY NEED TO GET SOME
11:17AM 24 FORM OF CLIA CLEARANCE FOR THOSE WALGREENS LOCATIONS WHERE
11:17AM 25 SYSTEMS ARE DEPLOYED."

11:17AM 1 DO YOU SEE THAT?

11:17AM 2 A. I DO.

11:17AM 3 Q. AND THEN IF YOU SKIP DOWN A COUPLE OF SENTENCES,

11:17AM 4 DR. RABODZEY SAYS, "I WOULD THINK THIS IS NOT A BIG DEAL, BUT

11:17AM 5 MAYBE A BIT OF A DELAY FOR THAT PHASE ONLY, STILL THEY CAN WORK

11:17AM 6 AROUND THESE OBSTACLES QUICKLY AND CAPTURE VOLUME THROUGH THEIR

11:18AM 7 HUB AND SPOKE MODEL."

11:18AM 8 DO YOU SEE THAT?

11:18AM 9 A. I DO.

11:18AM 10 Q. AND THEN IN THE SECOND TO THE LAST SENTENCE HE SAYS, "IF

11:18AM 11 THEY DO GET AWAY WITH THIS CLOUD IDEA, THIS IS UPSIDE, BUT IN

11:18AM 12 THE ABSENCE OF A WRITTEN COMMITMENT FROM THE FDA, I AM NOT SURE

11:18AM 13 THIS COULD BE A BASE CASE."

11:18AM 14 DO YOU SEE THAT?

11:18AM 15 A. I DO.

11:18AM 16 Q. OKAY. SO NOW LET'S GO TO EXHIBIT 20662 IN YOUR BINDER.

11:18AM 17 DO YOU SEE THAT?

11:18AM 18 A. YEAH.

11:18AM 19 Q. AND IS THIS ANOTHER EMAIL FROM DR. RABODZEY TO YOU AND

11:18AM 20 MR. KHANNA?

11:18AM 21 A. YES, IT IS.

11:18AM 22 Q. AND THAT'S JANUARY 24TH, 2014; RIGHT?

11:18AM 23 A. YES.

11:18AM 24 Q. AND IT'S ABOUT THERANOS; CORRECT?

11:18AM 25 A. YES.

11:18AM 1 MS. WALSH: YOUR HONOR, WE OFFER 20662.

11:19AM 2 MR. LEACH: NO OBJECTION.

11:19AM 3 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:19AM 4 (DEFENDANT'S EXHIBIT 20662 WAS RECEIVED IN EVIDENCE.)

11:19AM 5 BY MS. WALSH:

11:19AM 6 Q. OKAY. JUST FOCUSING ON THE TOP PART OF THE EMAIL.

11:19AM 7 DR. RABODZEY SAYS TO YOU, "HERE IS SOMETHING TO DISCUSS

11:19AM 8 WITH THERANOS: WHILE THERE IS NO CLEAR GUIDANCE ON COEFFICIENT

11:19AM 9 OF VARIATION NEEDED FOR CLIA CERTIFICATION BY TEST, IT IS

11:19AM 10 USUALLY UNDER 5 PERCENT."

11:19AM 11 DO YOU SEE THAT?

11:19AM 12 A. I DO.

11:19AM 13 Q. OKAY. "BELOW IS A DESCRIPTION OF PARVOVIRUS TEST WITH CV

11:19AM 14 OF 4.5 PERCENT."

11:19AM 15 DO YOU SEE THAT?

11:19AM 16 A. I DO.

11:19AM 17 Q. AND THEN DR. RABODZEY POINTS OUT, "SAME TEST FROM THERANOS

11:19AM 18 HAS AROUND 15-20 PERCENT INTERCARTRIDGE VARIATION; CORRECT?

11:19AM 19 A. YES.

11:19AM 20 Q. OKAY. AND THAT'S HIGHER THAN 5 PERCENT; RIGHT?

11:19AM 21 A. 15 TO 20 PERCENT IS HIGHER THAN 5 PERCENT, YES.

11:20AM 22 Q. OKAY. AND THEN HE GOES ON TO SAY, "ALSO, SOME OF THEIR

11:20AM 23 TESTS HAVE POOR R2."

11:20AM 24 DO YOU SEE THAT?

11:20AM 25 A. I DO.

11:20AM 1 Q. "WHICH IS A BIT CONCERNING.

11:20AM 2 "I THINK WE NEED TO CLARIFY THAT WITH THEM.

11:20AM 3 "WHETHER THIS IS ACCEPTABLE AND WHETHER IT IS A DRAWBACK
11:20AM 4 OF METHODOLOGY AND IF THEY CAN IMPROVE (OR NEED TO IMPROVE) ."

11:20AM 5 DO YOU SEE THAT?

11:20AM 6 A. I DO.

11:20AM 7 Q. SO DR. RABODZEY IN THIS EMAIL WAS EXPRESSING SOME CONCERNS
11:20AM 8 THAT HE HAD ABOUT THE DATA THAT HE HAD REVIEWED; RIGHT?

11:20AM 9 A. I BELIEVE HE'S REFERRING TO THIS PARTICULAR TEST FROM
11:20AM 10 ANOTHER COMPANY SO THAT'S -- SORRY.

11:20AM 11 I THINK THE REFERENCE TO THIS PARVOVIRUS TEST IS FROM
11:20AM 12 ANOTHER COMPANY. I DON'T KNOW, I DON'T KNOW WHAT COMPANY.

11:21AM 13 LIAISON LOOKS LIKE THE TRADE NAME, AND IT LOOKS LIKE A BELGIUM
11:21AM 14 COMPANY. I REALLY DON'T KNOW WHAT THAT IS REFERRING TO.

11:21AM 15 BUT THEN HE DOES ALSO MAKE A COMMENT ON THE R SQUARED,
11:21AM 16 SOME OF THEIR TESTS HAVE POOR R SQUARED. IT'S SUPPOSED TO READ
11:21AM 17 R SQUARED, NOT R2.

11:21AM 18 I DO THINK THAT IS REFERENCE TO THE SLIDE DECK THAT
11:21AM 19 MR. BALWANI SENT US.

11:21AM 20 Q. RIGHT.

11:21AM 21 AND DR. RABODZEY, AS FAR AS YOU KNOW, WENT THROUGH THAT
11:21AM 22 DATA; RIGHT?

11:21AM 23 A. YES.

11:21AM 24 Q. AND WHAT HE'S POINTING OUT IS SOME OF THE CONCERNS THAT HE
11:21AM 25 HAD WITH THE DATA THAT THERANOS HAD PROVIDED; RIGHT?

11:21AM 1 A. I MEAN, I DON'T KNOW EXACTLY WHAT HIS -- ALL I KNOW IS
11:21AM 2 WHAT HE WROTE HERE, WHICH IS, HE SAYS, "SOME OF THEIR TESTS
11:21AM 3 HAVE POOR R2, WHICH IS A BIT CONCERNING, I THINK WE NEED TO
11:22AM 4 CLARIFY THAT WITH THEM," AND THAT IS WHAT WE DID.

11:22AM 5 Q. RIGHT. AND THAT'S WHAT HE'S EXPRESSING IN THIS EMAIL;
11:22AM 6 CORRECT?

11:22AM 7 A. NO. HE'S DOING THE JOB WE TOLD HIM TO DO, WHICH WAS BE
11:22AM 8 SKEPTICAL, BRING YOUR A GAME, BUT DON'T BE OBNOXIOUS.

11:22AM 9 Q. RIGHT. AND HE'S DOING HIS JOB; RIGHT?

11:22AM 10 A. HE'S DOING HIS JOB.

11:22AM 11 Q. HE REVIEWED THE DATA?

11:22AM 12 A. YES.

11:22AM 13 Q. AND HE IS POINTING THINGS OUT TO YOU THAT HE OBSERVED IN
11:22AM 14 THE DATA; CORRECT?

11:22AM 15 A. THAT PARTICULAR STATEMENT, I DO BELIEVE, REFERENCES THE
11:22AM 16 DATA THAT THEY SENT US.

11:22AM 17 I THINK THE TOP PART OF THE EMAIL IS REFERENCING SOMETHING
11:22AM 18 ELSE THAT THE COMPANY DIDN'T SEND US FROM A DIFFERENT COMPANY.

11:22AM 19 Q. RIGHT.

11:22AM 20 BUT HE'S POINTING OUT IN THIS EMAIL THINGS THAT HE
11:22AM 21 OBSERVED IN THE THERANOS DATA; CORRECT?

11:22AM 22 A. YES.

11:22AM 23 Q. OKAY. IF YOU COULD TURN TO 7403.

11:23AM 24 DO YOU SEE THAT?

11:23AM 25 A. I DO.

11:23AM 1 Q. OKAY. IS THIS ANOTHER EMAIL FROM DR. RABODZEY TO YOU AND
11:23AM 2 MR. KHANNA?
11:23AM 3 A. YES.
11:23AM 4 Q. AND IT IS ON JANUARY 24TH, 2014; RIGHT?
11:23AM 5 A. YES.
11:23AM 6 Q. AND IT ALSO RELATES TO THERANOS; CORRECT?
11:23AM 7 A. YES.
11:23AM 8 MS. WALSH: YOUR HONOR, WE OFFER 7403.
11:23AM 9 MR. LEACH: YOUR HONOR, NO OBJECTION TO THE FIRST
11:23AM 10 HALF OF PAGE 1.
11:23AM 11 THE REMAINDER LOOKS TO BE ABOUT 30 OR 40 PAGES, WE WOULD
11:23AM 12 OBJECT TO ON 801 AND 702.
11:23AM 13 MS. WALSH: YEAH, THAT'S FINE, YOUR HONOR. I JUST
11:24AM 14 WANTED THE TOP PORTION OF PAGE 1.
11:24AM 15 THE COURT: SO THE TOP PORTION OF PAGE 1, ONLY THE
11:24AM 16 BOTTOM WILL BE REDACTED, AND ONLY THAT PAGE; IS THAT RIGHT?
11:24AM 17 MS. WALSH: THAT'S CORRECT, YEAH.
11:24AM 18 THE COURT: ALL RIGHT. WITH THAT CAVEAT, IT'S
11:24AM 19 ADMITTED, AND IT MAY BE PUBLISHED.
11:24AM 20 (DEFENDANT'S EXHIBIT 7493, REDACTED, WAS RECEIVED IN
11:24AM 21 EVIDENCE.)
11:24AM 22 BY MS. WALSH:
11:24AM 23 Q. OKAY. SO THIS IS ANOTHER EMAIL FROM DR. RABODZEY. AND
11:24AM 24 WHAT HE TELLS YOU IN THIS EMAIL IS, "HERE ARE THE REFERENCE
11:24AM 25 DOCUMENTS FOR OUR DISCUSSION TODAY."

11:24AM 1 "NUMBER 1, DECK ON VALIDATION AND I PASTED THE SLIDE WITH
11:24AM 2 SUGGESTED CV OF 5-10 PERCENT."
11:24AM 3 DO YOU SEE THAT?
11:24AM 4 A. I DO.
11:24AM 5 Q. AND CV STANDS FOR COEFFICIENT OF VARIATION; RIGHT?
11:24AM 6 A. YES.
11:24AM 7 Q. NUMBER 2 HE SAYS, "PARVOVIRUS IGG ASSAY WITH 4 PERCENT CV
11:25AM 8 VERSUS THERANOS AT 15-20 PERCENT (SEE PAGE 143 OF THEIR
11:25AM 9 PRESENTATION) ."
11:25AM 10 RIGHT?
11:25AM 11 A. YES, I SEE THAT.
11:25AM 12 Q. AND HE'S REFERRING TO THE SLIDE DECK THAT MR. BALWANI SENT
11:25AM 13 YOU; RIGHT?
11:25AM 14 A. I BELIEVE THAT'S RIGHT, ALTHOUGH THERE'S A PRESENTATION
11:25AM 15 THAT HE ATTACHED TO THIS EMAIL, SO I DON'T KNOW IF IT'S
11:25AM 16 REFERRING TO SOMETHING IN THAT PRESENTATION.
11:25AM 17 Q. OKAY.
11:25AM 18 A. I GUESS I'M NOT SURE.
11:25AM 19 Q. YEAH.
11:25AM 20 SO LET'S PULL UP 4077, WHICH IS IN EVIDENCE, AND WE'LL GO
11:25AM 21 TO PAGE 145 OF THE EXHIBIT.
11:26AM 22 DO YOU SEE PAGE 145?
11:26AM 23 A. YES.
11:26AM 24 Q. AND DO YOU SEE THAT IT SAYS PARVOVIRUS IGG; RIGHT?
11:26AM 25 A. YES.

11:26AM 1 Q. AND THERE'S A COLUMN, 1, 2, 3, THERE'S A COLUMN THAT SAYS
11:26AM 2 INTERCARTRIDGES.
11:26AM 3 DO YOU SEE THAT?
11:26AM 4 A. I DO.
11:26AM 5 Q. AND PERCENT CV.
11:26AM 6 DO YOU SEE THAT?
11:26AM 7 A. I DO.
11:26AM 8 Q. AND THE PERCENT RANGES ARE 13 TO APPROXIMATELY 21 PERCENT.
11:26AM 9 DO YOU SEE THAT?
11:26AM 10 A. I SEE THAT COLUMN, YES.
11:26AM 11 Q. OKAY. AND THAT'S WHAT DR. RABODZEY WAS REFERRING TO IN
11:26AM 12 THE EMAIL ON 7403, RIGHT, ITEM 2?
11:26AM 13 A. I MEAN, I'M NOT SURE WHAT HE'S REFERRING TO BECAUSE THE
11:27AM 14 COEFFICIENT OF VARIATION SHOULD BE FOR THE WHOLE DATA SET. SO
11:27AM 15 I DON'T KNOW -- SO I'M NOT SURE THAT WHAT HE'S REFERRING TO IN
11:27AM 16 THIS EMAIL AND IS REFERENCING EACH ONE OF THESE SAMPLES.
11:27AM 17 SO I'M NOT SURE IS THE ANSWER TO MY QUESTION, TO YOUR
11:27AM 18 QUESTION.
11:27AM 19 Q. OKAY. BUT YOU SEE IN HIS EMAIL HE REFERRED TO PAGE 143 OF
11:27AM 20 THEIR PRESENTATION.
11:27AM 21 DO YOU REMEMBER THAT?
11:27AM 22 A. I DO, YES.
11:27AM 23 Q. AND DO YOU SEE THAT BATES STAMP IN THE BOTTOM RIGHT-HAND
11:27AM 24 CORNER OF THIS DOCUMENT, IT'S 143?
11:27AM 25 DO YOU SEE THAT?

11:27AM 1 A. I DO.

11:27AM 2 Q. OKAY. SO LET'S GO BACK TO 7403.

11:27AM 3 AND HE SAYS IN ITEM 3, "I ALSO ATTACHED TWO MORE DATA

11:27AM 4 PRESENTATION WITH ILLUSTRATIVE GRAPHS OF R SQUARED FOR COMMONLY

11:27AM 5 USED TESTS. MOST OF THEM ARE GREATER THAN 95 PERCENT VERSUS

11:28AM 6 THERANOS USUALLY UNDER 95 PERCENT WITH THE EXCEPTION OF SIMPLE

11:28AM 7 GENERAL CHEMISTRY."

11:28AM 8 DO YOU SEE THAT?

11:28AM 9 A. I DO.

11:28AM 10 Q. OKAY. AND HE GOES ON TO SAY, "BASICALLY, MY CONCERN IS

11:28AM 11 THAT THEIR METHODOLOGY IS STILL RAW AND/OR THEY MAY BE PUSHING

11:28AM 12 LIMITS HERE."

11:28AM 13 DO YOU SEE THAT?

11:28AM 14 A. I DO.

11:28AM 15 Q. "I DO NOT THINK IT'S A DEAL BREAKER AS LONG AS THEY CAN

11:28AM 16 GET CLIA AND FDA APPROVAL ON THEIR TESTS AND CAN MAINTAIN

11:28AM 17 CERTIFICATION IN FUTURE."

11:28AM 18 DO YOU SEE THAT?

11:28AM 19 A. I DO.

11:28AM 20 Q. HE GOES ON TO SAY, "NOTE, THAT THEY WILL HAVE TO RERUN

11:28AM 21 THESE TESTS QUARTERLY AND LABCORP AND QUEST WILL EAT THEM ALIVE

11:28AM 22 IF THERE IS ANY EVIDENCE OF 20 PERCENT CV HERE."

11:28AM 23 DO YOU SEE THAT?

11:28AM 24 A. I DO.

11:28AM 25 Q. HE GOES ON TO SAY, "GOOD EXAMPLE OF WHAT I AM REFERRING TO

11:28AM 1 IS PAGE 137 THE LH ASSAY. THEIR R SQUARED IS PRETTY POOR AT
11:29AM 2 .91."

11:29AM 3 DO YOU SEE THAT?

11:29AM 4 A. I DO.

11:29AM 5 Q. "AND THERE ARE VERY FEW DATA POINTS AT THE HIGHER END OF
11:29AM 6 RANGE."

11:29AM 7 DO YOU SEE THAT?

11:29AM 8 A. YES.

11:29AM 9 Q. AND HE SAYS, "THIS COMPARES TO 0.992 R SQUARED FOR LEINCO
11:29AM 10 LH TEST ON 110 SAMPLES VERSUS THEIR APPROXIMATE 20."

11:29AM 11 DO YOU SEE THAT?

11:29AM 12 A. I DO.

11:29AM 13 Q. OKAY. SO DR. RABODZEY IS GOING THROUGH THE DATA; RIGHT?

11:29AM 14 A. YES.

11:29AM 15 Q. AND IT'S THE DATA THAT THERANOS PROVIDED; CORRECT?

11:29AM 16 A. THAT'S CORRECT.

11:29AM 17 Q. AND HE'S RAISING ISSUES THAT HE SEES TO YOU; RIGHT?

11:29AM 18 A. HE'S ANALYZING, AND HE'S DOING EXACTLY WHAT WE ASKED HIM
11:29AM 19 TO DO, WHICH IS TO GO THROUGH THE DATA WITH A SKEPTICAL LENS
11:29AM 20 AND ANALYZE IT.

11:29AM 21 Q. RIGHT. AND HE'S RAISING SOME ISSUES WHICH HE SEES TO YOU;
11:30AM 22 RIGHT?

11:30AM 23 A. YES.

11:30AM 24 Q. OKAY. LET'S GO TO 4088.

11:30AM 25 DO YOU SEE 4088?

11:30AM 1 A. I DO.

11:30AM 2 Q. AND THE TOP PART OF 4088 IS AN EMAIL BETWEEN YOU AND

11:30AM 3 ADAM CLAMMER; CORRECT?

11:30AM 4 A. YES, IT IS.

11:30AM 5 Q. AND THAT'S ON JANUARY 28TH, 2014; RIGHT?

11:30AM 6 A. YES.

11:30AM 7 Q. AND MR. CLAMMER WAS WORKING ON THE THERANOS DUE DILIGENCE

11:31AM 8 WITH YOU; CORRECT?

11:31AM 9 A. HE WASN'T REALLY WORKING ON THE DUE DILIGENCE, BUT HE WAS

11:31AM 10 SOMEONE THAT WE DID HAVE HIM, WE DID HAVE HIM -- THERANOS

11:31AM 11 APPROVED HIS -- ADDED HIM TO OUR CONFIDENTIALITY AGREEMENTS SO

11:31AM 12 WE WERE ABLE TO SHARE INFORMATION WITH HIM AS LONG AS IT DIDN'T

11:31AM 13 TALK ABOUT THEIR TECHNOLOGY, THEIR ROLLOUT, THEIR WALGREENS

11:31AM 14 RELATIONSHIP, ANY OF THE KIND OF KEY BUSINESS PIECES OF THEIR

11:31AM 15 STRATEGY, WE WERE ABLE TO SHARE INFORMATION.

11:31AM 16 AND AS I TESTIFIED YESTERDAY, HE WAS A FRIEND OF MY

11:31AM 17 PARTNER, AND HE'S SOMEONE WHO HAD INVESTED IN PRIVATE COMPANIES

11:31AM 18 IN HIS -- - EARLIER IN HIS CAREER IN THE HEALTH CARE SPACE.

11:31AM 19 Q. OKAY. BUT HE WAS PARTICIPATING WITH YOU HELPING YOU OUT

11:31AM 20 WITH DUE DILIGENCE; IS THAT FAIR?

11:31AM 21 A. I MEAN HE -- OKAY. YES.

11:31AM 22 Q. AND WHAT YOU STATED TO MR. CLAMMER IS -- OH, I'M SORRY.

11:32AM 23 THIS IS NOT IN EVIDENCE.

11:32AM 24 SO, YOUR HONOR, WE MOVE 4088 INTO EVIDENCE.

11:32AM 25 MR. LEACH: NO OBJECTION, YOUR HONOR.

11:32AM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:32AM 2 (GOVERNMENT'S EXHIBIT 4088 WAS RECEIVED IN EVIDENCE.)

11:32AM 3 BY MS. WALSH:

11:32AM 4 Q. WHAT YOU SAY, MR. GROSSMAN, TO MR. CLAMMER IS "LOT OF

11:32AM 5 DEBATE INTERNALLY ON ACCURACY."

11:32AM 6 DO YOU SEE THAT?

11:32AM 7 A. YES.

11:32AM 8 Q. "I THINK IT'S BASICALLY TRUE, BUT NOT NECESSARILY EVERY

11:32AM 9 TEST TODAY."

11:32AM 10 DO YOU SEE THAT?

11:32AM 11 A. YES.

11:32AM 12 Q. "I THINK WITHIN 6-12 MONTHS THEY WILL BE THERE. THERE ARE

11:32AM 13 1300 TESTS ON CLINICAL FEE SCHEDULE, 400 ARE 99 PERCENT OF

11:32AM 14 VOLUME AND 600 ARE 99 PERCENT."

11:32AM 15 DO YOU SEE THAT?

11:32AM 16 A. I DO.

11:32AM 17 Q. AND THEN YOU GO ON TO SAY, "M.D.'S DON'T CARE ABOUT DATA.

11:32AM 18 AS LONG AS ITS CLIA CERTIFIED LAB RUNNING THE TEST THEY ASSUME

11:32AM 19 IT'S COMMODITY."

11:32AM 20 DO YOU SEE THAT?

11:33AM 21 A. YES.

11:33AM 22 Q. "CAN TALK IN GENERAL TERMS ABOUT FINANCIALS."

11:33AM 23 CORRECT?

11:33AM 24 A. YES.

11:33AM 25 Q. OKAY. LET'S GO TO 4089.

11:33AM 1 DO YOU SEE THIS EMAIL, MR. GROSSMAN?

11:33AM 2 A. YES.

11:33AM 3 Q. AND THIS IS FROM DR. RABODZEY AGAIN; RIGHT?

11:33AM 4 A. YES.

11:33AM 5 Q. AND IT'S TO YOU AND MR. KHANNA AND OTHERS?

11:33AM 6 A. YES.

11:33AM 7 Q. AND IT'S ON JANUARY 28TH, 2014; CORRECT?

11:33AM 8 A. YES.

11:33AM 9 Q. AND IT RELATES TO THERANOS TECHNICAL AND REGULATORY

11:33AM 10 ASSESSMENT; RIGHT?

11:33AM 11 A. THAT'S THE SUBJECT, YES.

11:33AM 12 Q. OKAY.

11:33AM 13 YOUR HONOR, WE OFFER 4089.

11:34AM 14 MR. LEACH: NO OBJECTION, YOUR HONOR.

11:34AM 15 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:34AM 16 (GOVERNMENT'S EXHIBIT 4089 WAS RECEIVED IN EVIDENCE.)

11:34AM 17 BY MS. WALSH:

11:34AM 18 Q. OKAY. IF WE CAN TURN TO PAGE 2 OF THIS EXHIBIT.

11:34AM 19 ACTUALLY, I'M SORRY. LET'S START ON PAGE 1.

11:34AM 20 DR. RABODZEY --

11:34AM 21 A. COULD I HAVE A MINUTE TO REVIEW THE EMAIL OR READ THE

11:34AM 22 EMAIL?

11:34AM 23 Q. SURE.

11:34AM 24 A. ARE WE GOING TO GO OVER ALL OF IT?

11:34AM 25 Q. NOT ALL OF IT, BUT MUCH OF IT.

11:34AM 1 (PAUSE IN PROCEEDINGS.)

11:34AM 2 THE WITNESS: OKAY.

11:36AM 3 BY MS. WALSH:

11:36AM 4 Q. OKAY.

11:36AM 5 A. YEAH.

11:36AM 6 Q. ALL RIGHT. SO THIS IS AN EMAIL WHERE DR. RABODZEY IS

11:36AM 7 REPORTING ON A CALL THAT HE HAD WITH SOMEONE IN THE INDUSTRY

11:36AM 8 WHO HAD DEVELOPED TESTS AND HAD EXPERIENCE IN PREPARING 510(K)

11:36AM 9 SUBMISSIONS; RIGHT?

11:36AM 10 A. YES.

11:36AM 11 Q. OKAY. AND DR. RABODZEY SAYS, "HERE IS THE SUMMARY OF MY

11:36AM 12 RESEARCH AND THE CALL."

11:36AM 13 DO YOU SEE THAT?

11:36AM 14 A. I DO.

11:36AM 15 Q. AND THEN IF WE GO DOWN ABOUT HALF WAY IN THAT FIRST

11:36AM 16 PARAGRAPH HE SAYS, "IMPORTANT DISTINCTION BETWEEN CLIA AND FDA:

11:36AM 17 CMS CLIA PROGRAM DOES NOT ADDRESS THE CLINICAL VALIDITY OF ANY

11:37AM 18 TEST."

11:37AM 19 DO YOU SEE THAT?

11:37AM 20 A. I DO.

11:37AM 21 Q. "THAT IS, THE ACCURACY WITH WHICH THE TEST IDENTIFIES,

11:37AM 22 MEASURES, OR PREDICTS THE PRESENCE OR ABSENCE OF A CLINICAL

11:37AM 23 CONDITION OR PREDISPOSITION IN A PATIENT."

11:37AM 24 DO YOU SEE THAT?

11:37AM 25 A. I DO.

11:37AM 1 Q. "ON THE OTHER HAND, FDA EVALUATES THE CLINICAL VALIDITY OF
11:37AM 2 A TEST UNDER ITS PREMARKET CLEARANCE."

11:37AM 3 DO YOU SEE THAT?

11:37AM 4 A. I DO.

11:37AM 5 Q. "AND APPROVAL PROCESSES."

11:37AM 6 DO YOU SEE THAT?

11:37AM 7 A. I DO.

11:37AM 8 Q. OKAY. AND THEN LET'S SKIP DOWN TO THE HEADING, "LET ME
11:37AM 9 DIGEST THIS IN A SIMPLE WAY."

11:37AM 10 DO YOU SEE THAT?

11:37AM 11 A. I DO.

11:37AM 12 Q. AND THEN DR. RABODZEY SAYS, "THE FDA COULD CHOOSE TO SEND
11:37AM 13 CEASE AND DESIST ORDER TO THERANOS ANY TIME BECAUSE THEIR TESTS
11:37AM 14 ARE NOT FDA CLEARED. HISTORICALLY, THE FDA DID NOT DO THIS, SO
11:37AM 15 THERANOS IS CORRECT THAT SUCH AN AGGRESSIVE SCENARIO IS
11:37AM 16 UNLIKELY IN THE NEAR FUTURE."

11:37AM 17 DO YOU SEE THAT?

11:37AM 18 A. I DO.

11:37AM 19 Q. AND THEN LET'S FLIP TO PAGE 2.

11:38AM 20 DR. RABODZEY GIVES HIS CONCLUSION.

11:38AM 21 AND WHAT HE SAYS IS, "MY TAKE IS THAT WE DO NOT HAVE
11:38AM 22 ENOUGH INFORMATION TO ANSWER THE QUESTION OF WHETHER THE FDA
11:38AM 23 WILL DECIDE TO REGULATE THERANOS AND WHEN. WE ALSO DO NOT KNOW
11:38AM 24 WHETHER THERANOS WILL HAVE ENOUGH DATA ON THE 99 PERCENT OF THE
11:38AM 25 TESTING VOLUME TO SATISFY FDA REQUIREMENTS."

11:38AM 1 DO YOU SEE THAT?

11:38AM 2 A. I DO.

11:38AM 3 Q. "SINCE WE CANNOT GET ACCESS TO THEIR FDA COMMUNICATION ON
11:38AM 4 THIS TOPIC AND DO NOT HAVE A COMPREHENSIVE ACCESS TO DATA
11:38AM 5 UNDERLYING THE CHARTS THEY PRESENTED, I THINK THERE IS RISK
11:38AM 6 HERE."

11:38AM 7 DO YOU SEE THAT?

11:38AM 8 A. I DO.

11:38AM 9 Q. "THUS, MY CONCLUSION IS THAT WE HAVE TO ACCOUNT FOR RISK
11:38AM 10 THAT THE FDA WILL DECIDE TO REGULATE THERANOS MUCH EARLIER THAN
11:38AM 11 THEY THINK, WHICH MAY SLOW DOWN OR DERAIL THE LAUNCH."

11:38AM 12 DO YOU SEE THAT?

11:38AM 13 A. I DO.

11:39AM 14 Q. AND THEN HE SAYS, "WE ALSO HAVE TO ASSUME THAT THERE IS A
11:39AM 15 POSSIBILITY THAT THEY WILL NEVER BE ABLE TO GET CERTAIN TESTS
11:39AM 16 APPROVED BY THE FDA AND THEY WILL REMAIN VENOUS BLOOD DRAW
11:39AM 17 TESTS (WHICH THEY MENTIONED)."

11:39AM 18 DO YOU SEE THAT?

11:39AM 19 A. I DO.

11:39AM 20 Q. AND THEN UNDER ACTION HE SAYS, "I THINK THERE IS A LOW,
11:39AM 21 BUT UNQUANTIFIABLE, POSSIBILITY THAT EITHER THE FDA WILL BE
11:39AM 22 MORE AGGRESSIVE THAN THERANOS THINKS AND/OR THAT SOME OF THEIR
11:39AM 23 TESTS WILL NOT CLEAR FDA REVIEW. IT IS NOT UNUSUAL TO SEE
11:39AM 24 RISKS LIKE THESE IN EARLY STAGE INVESTMENTS, SO THIS IS NOT A
11:39AM 25 PROBLEM PER SE, BUT IT IS SOMETHING THAT WE NEED TO BE MINDFUL

11:39AM 1 OF AND SOMETHING THAT WE NEED TO ACCOUNT FOR IN OUR VALUATION
11:39AM 2 OF THE COMPANY."

11:39AM 3 DO YOU SEE THAT?

11:39AM 4 A. I DO.

11:39AM 5 Q. "BASICALLY, I WOULD ASSUME 10-25 PERCENT CHANCE OF A MAJOR
11:39AM 6 DELAY OR PROBLEMS WITH GETTING ALL OF THE TESTS ON THE MARKET
11:39AM 7 THROUGH THE FDA."

11:39AM 8 DO YOU SEE THAT?

11:39AM 9 A. I DO.

11:39AM 10 Q. OKAY. SO DR. RABODZEY IS GIVING YOU HIS TAKE ON
11:40AM 11 REGULATORY RISKS THAT WERE INVOLVED WITH THERANOS; IS THAT
11:40AM 12 FAIR?

11:40AM 13 A. HE'S GIVING US HIS ASSESSMENT OF THE RISKS OF THE FDA
11:40AM 14 APPROVAL PROCESS THAT THE COMPANY WAS PURSUING, WHICH WAS ABOVE
11:40AM 15 AND BEYOND THE REQUIREMENTS THAT THEY NEEDED TO OPERATE A CLIA
11:40AM 16 LABORATORY AND PROVIDE LABORATORY SERVICES. IT'S SOMETHING
11:40AM 17 THAT THEY TOLD US THAT THEY WERE GOING TO DO ABOVE AND BEYOND
11:40AM 18 WHAT THEY NEEDED TO DO.

11:40AM 19 SO THAT PART OF THE BUSINESS STRATEGY MR. OR DR. RABODZEY
11:40AM 20 IS ANALYZING THAT ASPECT OF THEIR REGULATORY STRATEGY.

11:40AM 21 Q. RIGHT. AND HE SAYS IN THE EMAIL, "THE FDA COULD CHOOSE TO
11:40AM 22 SEND A CEASE AND DESIST ORDER TO THERANOS ANY TIME."

11:40AM 23 YOU REMEMBER THAT; RIGHT?

11:40AM 24 A. YES.

11:40AM 25 Q. OKAY.

11:41AM 1 MR. LEACH: YOUR HONOR, I'M SORRY TO INTERRUPT. ONE
11:41AM 2 OF OUR JURORS --
11:41AM 3 THE COURT: OH, I'M SORRY. SHOULD WE TAKE A BREAK?
11:41AM 4 JUROR: YES.
11:41AM 5 THE COURT: LET'S DO THAT. WE'VE BEEN GOING ABOUT
11:41AM 6 TWO HOURS NOW. LET'S TAKE 30 MINUTES, LADIES AND GENTLEMEN,
11:41AM 7 AND THEN WE'LL COME BACK. THANK YOU.
11:42AM 8 (JURY OUT AT 11:42 A.M.)
11:42AM 9 THE COURT: MR. GROSSMAN, YOU CAN STAND DOWN AS
11:42AM 10 WELL.
11:42AM 11 PLEASE BE SEATED. THE RECORD SHOULD REFLECT THAT OUR JURY
11:42AM 12 HAS LEFT FOR OUR BREAK. MR. GROSSMAN HAS LEFT THE COURTROOM.
11:42AM 13 ALL COUNSEL AND MR. BALWANI REMAIN.
11:42AM 14 LET ME JUST GO THROUGH JUST A SCHEDULE, TIMING SCHEDULE
11:42AM 15 FOR TODAY.
11:42AM 16 MS. WALSH, DO YOU -- ANY IDEA HOW MUCH LONGER YOU HAVE?
11:42AM 17 MS. WALSH: YES, YOUR HONOR. I THINK IT WILL BE
11:42AM 18 CLOSE TO TWO HOURS LONG.
11:42AM 19 THE COURT: TWO MORE HOURS?
11:42AM 20 MS. WALSH: I THINK SO.
11:42AM 21 THE COURT: OKAY. THANK YOU.
11:42AM 22 AND THEN, MR. LEACH, YOU MAY HAVE SOME REDIRECT?
11:43AM 23 MR. LEACH: YES, YOUR HONOR.
11:43AM 24 THE COURT: OKAY. SO WE HAVE DEFERRED -- WE WERE
11:43AM 25 GOING TO START WITH A DISCUSSION THIS MORNING REGARDING A

11:43AM 1 GOVERNMENT'S MOTION. I DON'T HAVE THE DOCKET IN FRONT OF ME.

11:43AM 2 I DID RECEIVE AN OPPOSITION LAST NIGHT AT 9:53 P.M. I
11:43AM 3 THINK THE MOTION WAS FILED TUESDAY AT 11:53 A.M., I BELIEVE.
11:43AM 4 AND WE WERE GOING TO HAVE DISCUSSION THIS MORNING.

11:43AM 5 I'M CURIOUS IF THE GOVERNMENT WILL FILE A REPLY TO THE
11:43AM 6 OPPOSITION THAT WAS FILED LAST NIGHT?

11:43AM 7 MS. VOLKAR, WHY DON'T YOU COME UP. THANK YOU.

11:43AM 8 MY THOUGHT IS IF THE GOVERNMENT WISHED TO FILE AN
11:43AM 9 OPPOSITION TO THAT -- EXCUSE ME, A REPLY TO THE OPPOSITION.

11:44AM 10 SHE CAN JUST GO TO THIS ONE.

11:44AM 11 MS. WALSH: I'M SORRY, YOUR HONOR.

11:44AM 12 THE COURT: IT'S PROBABLY EASIER TO USE THIS ONE AND
11:44AM 13 THEN MR. COOPERSMITH CAN USE YOURS.

11:44AM 14 MR. COOPERSMITH: IT FEELS UNCOMFORTABLE OVER HERE,
11:44AM 15 YOUR HONOR.

11:44AM 16 THE COURT: IT'S BEEN A LONG TIME.

11:44AM 17 MR. COOPERSMITH: IT'S BEEN A LONG TIME, YEAH.

11:44AM 18 MS. VOLKAR: SORRY, YOUR HONOR.

11:44AM 19 THE GOVERNMENT DOES NOT SEE A NEED TO FILE A REPLY, BUT,
11:44AM 20 OF COURSE, IF IT WOULD AID THE COURT IN DOING SO.

11:44AM 21 WHEN WE WERE TOLD YESTERDAY THAT THE DEFENSE WOULD BE
11:44AM 22 FILING AROUND 10:00 P.M., I THINK IT WAS ALREADY LATE
11:44AM 23 AFTERNOON, WE ASSUMED THERE WON'T BE TIME FOR REPLY THIS
11:44AM 24 MORNING.

11:44AM 25 SO THAT'S A LONG WINDED WAY TO SAY WE'RE HAPPY TO DO

11:44AM 1 WHATEVER WOULD AID THE COURT, BUT WE'RE READY TO ARGUE, I
11:44AM 2 GUESS, WHENEVER THE TIME PERMITS FOR THE COURT.

11:44AM 3 THE COURT: SURE. THANK YOU.

11:44AM 4 WELL, THE TIMING OF THE FILINGS, I DIDN'T EXPECT A REPLY
11:44AM 5 WOULD BE FILED SUCH THAT IT COULD BE ARGUED THIS MORNING AT
11:44AM 6 8:15 WHEN WE INITIALLY SCHEDULED IT.

11:44AM 7 AND SO I'M THINKING NOW, JUST BECAUSE OF OUR SCHEDULE WITH
11:45AM 8 TESTIMONY TODAY, WE MAY HAVE ANOTHER THREE HOURS WITH THIS
11:45AM 9 WITNESS IT SOUNDS LIKE, AND THEN DEPENDING IF YOU REST.

11:45AM 10 I THINK, MR. COOPERSMITH, YOU'VE TOLD ME THAT YOU HAVE A
11:45AM 11 WITNESS THAT YOU WOULD LIKE TO GET ON TODAY.

11:45AM 12 MR. COOPERSMITH: YES, YOUR HONOR. SHE'S HERE. I
11:45AM 13 KNOW WE HAVE THE CLOCK BECAUSE THE COURT STATED IT PREVIOUSLY,
11:45AM 14 BUT I THINK, YOU KNOW, THIS IS, IN OUR VIEW, IMPORTANT TO
11:45AM 15 MS. WALSH TO FINISH HER CROSS.

11:45AM 16 AND WE DO WANT TO TRY TO GET DR. WOOTEN ON TODAY,
11:45AM 17 W-O-O-T-E-N.

11:45AM 18 I'M HOPING THERE WILL BE TIME FOR THAT IN THE AFTERNOON.
11:45AM 19 SHE'S NOT A LONG WITNESS. OBVIOUSLY I DON'T KNOW WHAT THE
11:45AM 20 CROSS WILL BE.

11:46AM 21 I THINK, AS I SAID, HER DIRECT WOULD NOT BE LONGER THAN
11:46AM 22 ABOUT 40 MINUTES IN MY ESTIMATION.

11:46AM 23 THE COURT: OKAY. THANK YOU. I APPRECIATE THE
11:46AM 24 CANDOR IN THE SCHEDULING.

11:46AM 25 I DON'T THINK WE'RE GOING TO HAVE TIME TO ARGUE THE MOTION

11:46AM 1 FULSOME THIS AFTERNOON -- TODAY.

11:46AM 2 WE DID HAVE DISRUPTIONS BECAUSE OF OUR JUROR SITUATION.

11:46AM 3 SO THAT OCCUPIED SOME TIME.

11:46AM 4 SO LET ME -- I'M DOING THIS NOW TO TELL YOU, MS. VOLKAR,

11:46AM 5 THAT WHY DON'T I GIVE YOU AN OPPORTUNITY TO FILE A REPLY, AND

11:46AM 6 IF YOU COULD GET THAT FILED BY MAYBE SUNDAY, 6:00 P.M., NO

11:46AM 7 LATER THAN, I THINK THAT WOULD BE HELPFUL, AND I'LL LOOK AND

11:46AM 8 SEE WHEN WE CAN HAVE A DISCUSSION ABOUT THAT MOTION.

11:47AM 9 I'M TRYING TO MOVE THINGS SUCH THAT WE CAN HAVE SOME TIME

11:47AM 10 MONDAY MORNING, AND I'LL SEE WHAT I CAN DO ABOUT THAT. BUT WE

11:47AM 11 HAVE A CRIMINAL CALENDAR THAT DAY. WE HAVE SOME CALENDARS THAT

11:47AM 12 MORNING AND AFTERNOON. LET'S ME SEE WHAT I CAN DO.

11:47AM 13 MR. COOPERSMITH: WE'RE HAPPY TO ARGUE IT MONDAY.

11:47AM 14 THE COURT: YOU WON'T HAVE ANY TIME TODAY.

11:47AM 15 MR. COOPERSMITH: I APPRECIATE THAT, OF COURSE.

11:47AM 16 I DO HAVE A CONFLICT FROM APPROXIMATELY 9:30 TO 10:30 A.M.

11:47AM 17 ON MONDAY. IT WOULD BE DIFFICULT TO MOVE IT. I'M NOT GOING TO

11:47AM 18 SAY IMPOSSIBLE, BUT THAT IS JUST ON MY CALENDAR.

11:47AM 19 THE COURT: WELL, WE'LL SEE WHAT WE CAN, WE'LL SEE

11:47AM 20 WHAT WE CAN DO.

11:47AM 21 I THINK WE HAVE A -- WE'LL SEE.

11:47AM 22 I KNOW I HAVE SOMETHING SCHEDULED I THINK AT 10:30, BUT

11:47AM 23 LET'S SEE WHAT WE CAN DO.

11:47AM 24 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:47AM 25 THE COURT: OKAY.

11:47AM 1 MS. VOLKAR: THANK YOU, YOUR HONOR.

11:48AM 2 (RECESS FROM 11:48 A.M. UNTIL 12:22 P.M.)

12:22PM 3 (JURY IN AT 12:22 P.M.)

12:22PM 4 THE COURT: WE'RE BACK ON THE RECORD. ALL PARTIES

12:22PM 5 PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

12:22PM 6 MS. WALSH.

12:22PM 7 MS. WALSH: THANK YOU, YOUR HONOR.

12:23PM 8 Q. ALL RIGHT. HELLO, MR. GROSSMAN AGAIN.

12:23PM 9 IF YOU COULD TURN IN YOUR BINDER TO 14054.

12:23PM 10 A. OKAY.

12:23PM 11 Q. IS THIS ANOTHER EMAIL FROM DR. RABODZEY TO YOU, AND

12:23PM 12 MR. KHANNA, AND DR. BALASURYAN ABOUT THERANOS DILIGENCE CALLS?

12:23PM 13 A. SURE. I'D LIKE TO READ THROUGH IT.

12:23PM 14 Q. SURE. TAKE YOUR TIME.

12:23PM 15 (PAUSE IN PROCEEDINGS.)

12:23PM 16 THE WITNESS: OKAY.

12:24PM 17 BY MS. WALSH:

12:24PM 18 Q. SO IS THAT ANOTHER EMAIL FROM DR. RABODZEY TO YOU

12:24PM 19 REGARDING THERANOS DILIGENCE CALLS?

12:24PM 20 A. YES.

12:24PM 21 Q. OKAY. AND THAT THE EMAIL IS ON JANUARY 29TH, 2014; IS

12:24PM 22 THAT RIGHT?

12:24PM 23 A. YES.

12:24PM 24 MS. WALSH: YOUR HONOR, WE OFFER 14054.

12:24PM 25 MR. LEACH: NO OBJECTION, YOUR HONOR.

12:24PM 1 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:24PM 2 (DEFENDANT'S EXHIBIT 14054 WAS RECEIVED IN EVIDENCE.)

12:24PM 3 BY MS. WALSH:

12:24PM 4 Q. OKAY. SO IF YOU LOOK AT THE EMAIL, DR. RABODZEY SAYS TO
12:24PM 5 YOU, "BRIAN,

12:24PM 6 "WE HAD ONE MORE DILIGENCE CALL TODAY WITH A SCIENTIST WHO
12:24PM 7 DEVELOPS LAB BASED TESTS, AND HE CONFIRMED EVERY POINT THAT
12:24PM 8 THERANOS MADE WITH THE EXCEPTION OF PUTTING MACHINES AT
12:24PM 9 WALGREENS LOCATIONS."

12:24PM 10 DO YOU SEE THAT?

12:24PM 11 A. YES.

12:24PM 12 Q. AND THEN DR. RABODZEY GOES ON TO SAY, "HIS VIEW WAS THAT
12:25PM 13 CLIA APPROVAL IS ENOUGH AS LONG AS YOU HAVE MACHINES INSIDE OF
12:25PM 14 THE CLIA LAB. NO NEED FOR FDA APPROVAL.

12:25PM 15 "THERANOS MEETS CLIA REQUIREMENTS ON MOST OF THEIR TESTS
12:25PM 16 AS WE KNOW."

12:25PM 17 DO YOU SEE THAT?

12:25PM 18 A. YES, I DO.

12:25PM 19 Q. HE SAID -- CONTINUING ON.

12:25PM 20 DR. RABODZEY IS RELAYING TO YOU, "HE SAID, HOWEVER, THAT
12:25PM 21 IF YOU WANT TO PUT A MACHINE IN A WALGREENS LOCATION, IT HAS TO
12:25PM 22 BE FDA CLEARED.

12:25PM 23 "HE DID ACKNOWLEDGE THAT THIRD PARTY DEVICE STANDARDS ARE
12:25PM 24 MUCH HIGHER THAN CLIA.

12:25PM 25 "ADDITIONALLY, HE DID BELIEVE THAT WHILE MINIATURIZING --"

12:25PM 1 THE COURT: SO, MS. WALSH, CAN YOU SLOW DOWN WHEN
12:25PM 2 YOU READ A DOCUMENT FOR OUR REPORTER'S BENEFIT.

12:25PM 3 MS. WALSH: SURE. APOLOGIES.

12:25PM 4 Q. "HE DID BELIEVE THAT WHILE MINIATURIZING LABCORP TEST MENU
12:25PM 5 IS POSSIBLE, IT WILL BE VERY HARD TO DO ONE SOME TESTS AND
12:26PM 6 ACCURACY WILL DETERIORATE (BUT WE ALREADY KNOW THAT)."

12:26PM 7 DO YOU SEE THAT?

12:26PM 8 A. I SEE THAT.

12:26PM 9 Q. AND THEN DR. RABODZEY GOES ON TO SAY, "OVERALL, I THINK
12:26PM 10 ACROSS THE 3 REGULATORY/SCIENCE CALLS I FEEL THAT THERE IS
12:26PM 11 SMALL RISK TO IMPLEMENTATION IF THE FDA CHOOSES TO EXERCISE
12:26PM 12 THEIR AUTHORITY, BUT THIS WOULD BE UNUSUAL. SO, I WOULD STILL
12:26PM 13 STICK TO MY LOW 10-20 PERCENT CHANCE THAT THE IMPLEMENTATION
12:26PM 14 GETS DETAILED BY THE FDA."

12:26PM 15 DO YOU SEE THAT?

12:26PM 16 A. I DO.

12:26PM 17 Q. "THE FDA DEMANDING MORE REGULATION AND A DECENT CHANCE
12:26PM 18 THAT THE SOME TESTS MAY NOT PASS THE FDA 501(K) REVIEW."

12:26PM 19 DO YOU SEE THAT?

12:26PM 20 A. YES.

12:26PM 21 Q. AND THEN IN THE LAST PARAGRAPH HE SAYS, "ON A SIDE NOTE, I
12:27PM 22 AM NOT SURE WHAT THERANOS IS DOING WITH MY TEST, BUT I STILL
12:27PM 23 HAVE NOT GOTTEN THE RESULTS AND I SPOKE TO ONEMEDICAL AND THEY
12:27PM 24 DID NOT GET MY RESULTS EITHER."

12:27PM 25 DO YOU SEE THAT?

12:27PM 1 A. YES, I DO.

12:27PM 2 Q. OKAY. SO YOU UNDERSTOOD AT THE TIME THAT DR. RABODZEY HAD

12:27PM 3 GONE IN FOR A TEST AT WALGREENS; RIGHT?

12:27PM 4 A. YES.

12:27PM 5 Q. AND HE HAD GOTTEN A THERANOS TEST; RIGHT?

12:27PM 6 A. YES.

12:27PM 7 Q. AND AS OF THIS EMAIL, HE STILL HAD NOT GOTTEN HIS RESULTS;

12:27PM 8 RIGHT?

12:27PM 9 A. THAT APPEARS TO BE THE CASE, YES.

12:27PM 10 Q. OKAY. SO LET'S TURN NOW TO 14101.

12:27PM 11 DO YOU SEE THAT EMAIL?

12:27PM 12 A. I DO.

12:27PM 13 Q. DO YOU NEED A MINUTE TO READ IT?

12:27PM 14 A. I DO. YES. THANK YOU.

12:28PM 15 (PAUSE IN PROCEEDINGS.)

12:28PM 16 THE WITNESS: OKAY.

12:28PM 17 BY MS. WALSH:

12:28PM 18 Q. OKAY. AND THIS IS AN EMAIL, AGAIN, FROM DR. RABODZEY TO

12:28PM 19 YOU AND MR. KHANNA; RIGHT?

12:28PM 20 A. YES.

12:28PM 21 Q. AND IT WAS SENT ON JANUARY 26TH, 2014; CORRECT?

12:28PM 22 A. YES.

12:29PM 23 Q. AND IT RELATES TO THE THERANOS TEST HE TOOK; RIGHT?

12:29PM 24 A. YES.

12:29PM 25 MS. WALSH: YOUR HONOR, WE OFFER 14001.

12:29PM 1 MR. LEACH: NO OBJECTION.

12:29PM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:29PM 3 (DEFENDANT'S EXHIBIT 14001 WAS RECEIVED IN EVIDENCE.)

12:29PM 4 BY MS. WALSH:

12:29PM 5 Q. OKAY. SO IN THE FIRST LINE YOU SEE DR. RABODZEY SAYS,
12:29PM 6 "DID THE TEST TODAY."

12:29PM 7 DO YOU SEE THAT?

12:29PM 8 A. I DO.

12:29PM 9 Q. AND THEN IF WE SKIP DOWN A FEW BULLETS TO BLOOD DRAW
12:29PM 10 ITSELF, DO YOU SEE THE LINE "BLOOD DRAW ITSELF"?

12:29PM 11 A. I DO.

12:29PM 12 Q. AND HE SAYS, "BLOOD DRAW ITSELF WAS QUITE PAINLESS, BUT
12:29PM 13 THE TECH DID ACKNOWLEDGE THAT SOME WOMEN FIND IT UNCOMFORTABLE
12:29PM 14 AS THEIR FINGERS NEED TO BE SQUEEZED HARD AND IT IS A BIT
12:29PM 15 PAINFUL.

12:29PM 16 "THEY DID DRAW TWO SAMPLES, NOT ONE (4 NANOTAINERS)
12:29PM 17 BECAUSE I HAD TO DO CBC AND THE LIPID PANEL, BUT THESE ARE THE
12:30PM 18 TWO MOST COMMON THINGS THAT ARE ORDERED. WAS NOT A BIG DEAL,
12:30PM 19 BUT IT TAKES MORE TIME AND INCREMENTALLY HARDER TO SQUEEZE MORE
12:30PM 20 BLOOD FOR THE SECOND DRAW (DON'T NEED TO PUNCTURE TWICE
12:30PM 21 THOUGH) ."

12:30PM 22 DO YOU SEE THAT?

12:30PM 23 A. I DO.

12:30PM 24 Q. AND THEN HE SAYS, "THE TECH TOLD ME THEY ARE NOW IN A TEST
12:30PM 25 MODE AND TRYING TO OPTIMIZE THINGS VERY WELL AND CONVERT ALL

12:30PM 1 VENOUS DRAW TESTS BEFORE STARTING LARGER PROMOTIONAL CAMPAIGN."

12:30PM 2 DO YOU SEE THAT?

12:30PM 3 A. I DO.

12:30PM 4 Q. OKAY. AND SO YOU KNEW AT THIS POINT IN TIME IN JANUARY OF

12:30PM 5 2014 THAT THERANOS WAS DOING SOME VENOUS TESTING; IS THAT

12:30PM 6 RIGHT?

12:30PM 7 A. YES.

12:30PM 8 Q. OKAY. AND YOU TESTIFIED ON YOUR DIRECT ON WEDNESDAY THAT

12:31PM 9 YOU BELIEVED THE VENOUS DRAWS WERE BEING TESTED ON VENOUS

12:31PM 10 TECHNOLOGY; IS THAT RIGHT?

12:31PM 11 A. YES.

12:31PM 12 Q. BUT DURING YOUR CONVERSATIONS THERANOS, YOU DON'T REMEMBER

12:31PM 13 HAVING ANY DISCUSSIONS WITH ANYONE AT THERANOS ABOUT HOW THEY

12:31PM 14 WERE TESTING THOSE VENOUS DRAWS, DO YOU?

12:31PM 15 A. I DON'T RECALL SPECIFICALLY.

12:31PM 16 Q. OKAY. LET'S TURN NOW TO 14057.

12:31PM 17 A. I'M ASSUMING YOU MEAN BEFORE WE INVESTED.

12:31PM 18 Q. DURING YOUR DUE DILIGENCE PROCESS.

12:31PM 19 A. YEAH.

12:31PM 20 Q. 1547 -- I'M SORRY. 14057.

12:32PM 21 A. OKAY.

12:32PM 22 Q. AND THIS IS AN EMAIL BETWEEN YOU AND MR. BALWANI, AND THEN

12:32PM 23 LATER IN THE CHAIN BETWEEN YOU, AND DR. RABODZEY, MR. KHANNA,

12:32PM 24 AND DR. BALASURYAN.

12:32PM 25 DO YOU SEE THAT?

12:32PM 1 A. YEAH. I'M JUST LOOKING AT ALL OF THE --

12:32PM 2 Q. SURE.

12:32PM 3 A. OKAY. YES, I SEE THAT.

12:32PM 4 Q. OKAY. AND THIS IS AN EMAIL DISCUSSING SOME OPEN ITEMS
12:32PM 5 RELATING TO YOUR POTENTIAL INVESTMENT IN THERANOS; IS THAT
12:32PM 6 RIGHT?

12:32PM 7 A. WELL, LET ME JUST READ IT THEN.

12:32PM 8 Q. SURE.

12:33PM 9 (PAUSE IN PROCEEDINGS.)

12:33PM 10 THE WITNESS: OKAY. I'M SORRY. WHAT WAS THE
12:33PM 11 QUESTION?

12:33PM 12 BY MS. WALSH:

12:33PM 13 Q. WHETHER THIS EMAIL IS AN EMAIL ABOUT SOME OPEN ITEMS
12:33PM 14 RELATING TO PFM'S POTENTIAL INVESTMENT IN THERANOS?

12:33PM 15 A. YES, IT IS.

12:33PM 16 Q. OKAY. YOUR HONOR, WE OFFER 14057.

12:33PM 17 MR. LEACH: NO OBJECTION, YOUR HONOR.

12:33PM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:33PM 19 (DEFENDANT'S EXHIBIT 14057 WAS RECEIVED IN EVIDENCE.)

12:33PM 20 BY MS. WALSH:

12:33PM 21 Q. AND, MR. GROSSMAN, JUST FOCUSING ON THE FIRST PAGE OF
12:33PM 22 THIS CHAIN.

12:33PM 23 A. THE FIRST PAGE, YOU MEAN IN THE --

12:33PM 24 Q. OF THE EXHIBIT?

12:33PM 25 A. AT THE END OF THE CHAIN OR THE BEGINNING?

12:33PM 1 Q. THE END IN TIME, THE FIRST PAGE OF THE EXHIBIT.

12:33PM 2 A. OKAY.

12:33PM 3 Q. DO YOU SEE THAT?

12:33PM 4 A. YES.

12:33PM 5 Q. OKAY. I JUST WANT TO FOCUS YOU ON THE EMAIL FROM YOU TO

12:33PM 6 MR. BALWANI WHERE YOU SAY, "THANKS SUNNY."

12:33PM 7 DO YOU SEE THAT?

12:33PM 8 A. YES.

12:33PM 9 Q. SO YOU SAY, "THANKS SUNNY.

12:33PM 10 "BY THE WAY, MY TEST RESULTS WHICH I HAVE TAKEN AT

12:34PM 11 WALGREENS YESTERDAY AT 3:45 HAVE NOT BEEN DELIVERED TO MY

12:34PM 12 PHYSICIAN."

12:34PM 13 DO YOU SEE THAT?

12:34PM 14 A. I DO SEE THAT.

12:34PM 15 Q. AND IT'S ON THE SCREEN AS WELL IF THAT'S EASIER.

12:34PM 16 AND THEN MOVING UP THE CHAIN, MR. BALWANI RESPONDS TO YOU.

12:34PM 17 DO YOU SEE THAT?

12:34PM 18 A. I DO SEE THAT.

12:34PM 19 Q. AND HE SAYS, "SURE.

12:34PM 20 "ON YOUR TESTS. THERE WAS A CONTROL THAT FAILED ON ONE OF

12:34PM 21 THE ASSAYS AND THE LAB RERAN THE SAMPLE (AS IS THE PROCEDURE)

12:34PM 22 AND THEY WERE HOLDING BACK RESULTS FOR ALL OF THE OTHER TESTS

12:34PM 23 UNTIL THE ENTIRE ORDER WAS COMPLETE. I TOLD THEM TO RELEASE

12:34PM 24 THE PARTIAL (WHICH THEY DID) BUT THEN ALSO NOTIFIED ME FEW

12:34PM 25 MINUTES BACK THAT THE LAST REMAINING TEST WAS COMPLETED

12:34PM 1 SUCCESSFULLY AND THE FULL RESULT WAS RELEASED. YOUR DOCTOR

12:34PM 2 SHOULD HAVE ALL OF THE RESULTS."

12:34PM 3 DO YOU SEE THAT?

12:34PM 4 A. I DO.

12:34PM 5 Q. OKAY. AND MR. BALWANI WAS RELAYING TO YOU THE DETAILS OF
12:35PM 6 WHAT HAD HAPPENED WITH YOUR TEST; RIGHT?

12:35PM 7 A. I MEAN -- YES, HE WAS EXPLAINING. I DON'T KNOW HOW

12:35PM 8 DETAILED. I WOULDN'T SAY IT WAS VERY DETAILED, BUT HE WAS

12:35PM 9 EXPLAINING, I THINK, WHY MY PHYSICIAN HAD NOT HEARD -- HAD NOT
12:35PM 10 RECEIVED A LAB RESULT YET.

12:35PM 11 Q. OKAY. BUT HE WAS TELLING YOU THAT THERE WAS A CONTROL

12:35PM 12 THAT FAILED ON ONE OF THE ASSAYS; RIGHT? HE SAYS THAT TO YOU;
12:35PM 13 RIGHT?

12:35PM 14 A. THAT'S DEFINITELY WHAT THAT SAYS.

12:35PM 15 Q. OKAY.

12:35PM 16 A. YES.

12:35PM 17 Q. AND THEN YOU FORWARD THAT FROM MR. BALWANI TO

12:35PM 18 DR. RABODZEY, MR. KHANNA, AND DR. BALASURYAN.

12:35PM 19 DO YOU SEE THAT?

12:35PM 20 A. I DO.

12:35PM 21 Q. AND YOU SAY, "REAL WORLD."

12:35PM 22 DO YOU SEE THAT?

12:35PM 23 A. I DO.

12:35PM 24 Q. OKAY. IF YOU COULD TURN NOW TO 10429.

12:36PM 25 A. OKAY.

12:36PM 1 Q. AND IS THAT AN EMAIL BETWEEN YOU AND DR. RABODZEY, AND
12:36PM 2 MR. KHANNA, AND DR. BALASURYAN ON JANUARY 29TH, 2014?

12:36PM 3 A. YES.

12:36PM 4 Q. OKAY. AND PART OF THE EMAIL CHAIN IS YOU FORWARDING
12:36PM 5 INFORMATION YOU GOT FROM THERANOS AT THE BOTTOM THERE; RIGHT?

12:36PM 6 A. YES.

12:36PM 7 Q. OKAY. AND THIS IS IN CONNECTION WITH THE TESTS THAT YOUR
12:36PM 8 TEAM WAS TAKING IN WALGREENS, THERANOS TESTS; IS THAT RIGHT?

12:36PM 9 A. I BELIEVE THIS WAS RELATED TO MR. RABODZEY'S TEST RESULTS.

12:37PM 10 MS. WALSH: OKAY. YOUR HONOR, WE OFFER 14029.

12:37PM 11 MR. LEACH: NO OBJECTION.

12:37PM 12 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:37PM 13 (DEFENDANT'S EXHIBIT 14029 WAS RECEIVED IN EVIDENCE.)

12:37PM 14 BY MS. WALSH:

12:37PM 15 Q. SO FOCUSING ON THE FIRST EMAIL IN TIME AT THE BOTTOM,
12:37PM 16 THIS IS AN EMAIL FROM JEFFREY BLICKMAN WHO WORKED AT THERANOS;
12:37PM 17 RIGHT?

12:37PM 18 A. YES, THAT APPEARS TO BE THE CASE.

12:37PM 19 Q. UH-HUH. AND HE WAS EMAILING YOU; CORRECT?

12:37PM 20 A. YES.

12:37PM 21 Q. AND COPYING MR. RABODZEY; RIGHT?

12:37PM 22 A. YES.

12:37PM 23 Q. OKAY. AND MR. BLICKMAN SAYS, "HI BRIAN -- SUNNY PASSED
12:37PM 24 ALONG YOUR NOTE REGARDING MR. RABODZEY'S TEST RESULTS. WE
12:37PM 25 INVESTIGATED THIS FURTHER AND CONFIRMED THAT OUR LAB RELEASED

12:37PM 1 THE RESULTS TO OUR ORDERING PHYSICIAN YESTERDAY (1/28). WE
12:37PM 2 WERE CONTACTED THIS MORNING BY THE PHYSICIAN'S OFFICE WHO ASKED
12:37PM 3 THAT WE RESEND THE RESULTS TO A SECONDARY FAX NUMBER AS THE
12:37PM 4 FIRST MACHINE HAD NOT RECEIVED THE REPORT. IT WAS CONFIRMED
12:38PM 5 SOON THEREAFTER AND THE FINAL REPORT HAD BEEN RECEIVED."

12:38PM 6 DO YOU SEE THAT?

12:38PM 7 A. I DO.

12:38PM 8 Q. OKAY. AND THEN YOU -- IN THE EMAIL ABOVE THAT, YOU WROTE,
12:38PM 9 "STILL TOOK A LONG TIME."

12:38PM 10 DO YOU SEE THAT?

12:38PM 11 A. I DO.

12:38PM 12 Q. OKAY. AND THEN ULTIMATELY DR. RABODZEY REPLIES TO YOU AT
12:38PM 13 THE TOP.

12:38PM 14 DO YOU SEE THAT?

12:38PM 15 A. I DO.

12:38PM 16 Q. AND DR. RABODZEY SAYS, "GOT THE RESULTS.

12:38PM 17 "LOOKS CONSISTENT WITH PREVIOUS TESTS."

12:38PM 18 DO YOU SEE THAT?

12:38PM 19 A. YES.

12:38PM 20 Q. OKAY. IF WE COULD TURN TO 14055.

12:39PM 21 A. OKAY.

12:39PM 22 Q. OKAY. SO 14055 APPEARS TO BE A CONTINUATION OF THAT CHAIN
12:39PM 23 THAT WE SAW IN 14029; RIGHT?

12:39PM 24 A. YES, IT DOES.

12:39PM 25 Q. AND THE TOP PART OF THAT CHAIN, THAT IS A NEW EMAIL IS

12:39PM 1 FROM DR. RABODZEY TO YOU AND OTHER MEMBERS OF YOUR TEAM;

12:39PM 2 CORRECT?

12:39PM 3 A. YES.

12:39PM 4 Q. AND IT'S ABOUT THAT SAME THERANOS TEST; RIGHT?

12:39PM 5 A. YES.

12:39PM 6 MS. WALSH: YOUR HONOR, WE OFFER 14055.

12:39PM 7 MR. LEACH: NO OBJECTION.

12:39PM 8 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:39PM 9 (DEFENDANT'S EXHIBIT 14055 WAS RECEIVED IN EVIDENCE.)

12:39PM 10 BY MS. WALSH:

12:39PM 11 Q. SO JUST FOCUSING ON THE TOP PART OF THAT CHAIN,

12:39PM 12 DR. RABODZEY SAYS, "AFTER YOU SAY IT STILL TOOK A LONG TIME,"

12:40PM 13 HIS REPLAY IS, "THIS IS THE PROBLEM WITH LACK OF CONNECTION TO

12:40PM 14 DOCS OFFICE -- MY DOC STILL DID NOT CALL ME AND DID NOT SEND

12:40PM 15 THE RESULTS.

12:40PM 16 "I THINK THIS IS SOMETHING THAT CAN BE RESOLVED IN FUTURE

12:40PM 17 WHEN EVERYONE STARTS USING EMR."

12:40PM 18 AND WHAT DOES EMR STAND FOR, MR. GROSSMAN?

12:40PM 19 A. IT STANDS FOR ELECTRONIC MEDICAL RECORD.

12:40PM 20 Q. OKAY. AND THEN HE CONTINUES.

12:40PM 21 "BUT FOR THE NEXT FEW YEARS, THIS 4HR TURNAROUND TIME

12:40PM 22 BENEFIT WILL BE MUTED BY THE FACT THAT IT STILL TAKES DAYS FOR

12:40PM 23 DOCS TO ACTUALLY SEND THE RESULTS TO PATIENTS?"

12:40PM 24 DO YOU SEE THAT?

12:40PM 25 A. I DO.

12:40PM 1 Q. OKAY. AND YOU UNDERSTOOD THAT NOT ALL DOCTORS AT THIS
12:40PM 2 POINT IN TIME HAD IMPLEMENTED ELECTRONIC MEDICAL RECORDS YET;
12:40PM 3 IS THAT RIGHT?

12:40PM 4 A. NO, I WOULDN'T AGREE WITH THAT.

12:40PM 5 Q. SO IT'S YOUR TESTIMONY THAT ALL DOCTORS HAD IMPLEMENTED
12:40PM 6 EMR?

12:40PM 7 A. I MEAN, PRETTY MUCH 100 PERCENT OF THE MARKET HAD EMR'S BY
12:41PM 8 2014.

12:41PM 9 YOU KNOW, THERE'S, THERE'S 30 DIFFERENT SOFTWARE
12:41PM 10 PROVIDERS. SOME OF THEM GIVE IT AWAY. THE LARGEST MEDICAL
12:41PM 11 PRACTICES HAVE ALL STANDARDIZED AROUND THREE OR FOUR PROVIDERS.

12:41PM 12 AND THEN IN THE 2011, AMERICAN RECOVERY AND REINVESTMENT
12:41PM 13 ACT, THE GOVERNMENT BASICALLY GAVE MONEY TO PHYSICIAN PRACTICES
12:41PM 14 TO BUY EMR.

12:41PM 15 SO AT THAT POINT YOU SAW A HUGE SPIKE IN EMR UPTAKE IN
12:41PM 16 MEDICAL OFFICES. SO BY THIS POINT EVERYBODY HAD ONE.

12:41PM 17 Q. OKAY. BUT MR. -- DR. RABODZEY'S DOCTOR APPARENTLY DIDN'T
12:41PM 18 BECAUSE THE RESULTS HAD TO BE FAXED; IS THAT RIGHT?

12:41PM 19 A. YOU KNOW, I'M NOT SURE THAT'S THE ISSUE HERE.

12:41PM 20 YOU KNOW, I THINK WHAT MOST LIKELY THIS IS REFERRING TO IS
12:41PM 21 WHETHER OR NOT HE HAD AN ELECTRONIC CONNECTION FROM THEIR EMR
12:41PM 22 TO THE WALGREENS PHARMACY. THAT'S A WHOLE SEPARATE ISSUE.

12:42PM 23 BUT DR. RABODZEY IS NOT REALLY AN EXPERT IN THE MEDICAL
12:42PM 24 SOFTWARE SPACE, AND SO I THINK HE'S TRYING TO EXPLAIN WHAT
12:42PM 25 HAPPENED, BUT I DON'T THINK HE HAS AS MUCH DETAILED

12:42PM 1 UNDERSTANDING OF HOW THAT PARTICULAR PART OF HEALTH CARE WORKS.

12:42PM 2 Q. OKAY. BUT WHAT HE'S TELLING YOU IN THIS EMAIL IS "THE

12:42PM 3 PROBLEM WAS THE LACK OF DIRECT CONNECTION TO THE DOCTOR'S

12:42PM 4 OFFICE."

12:42PM 5 RIGHT? DO YOU SEE THOSE WORDS THERE?

12:42PM 6 A. YES, I DO.

12:42PM 7 Q. AND HE SAYS HE THINKS THIS IS SOMETHING THAT CAN BE

12:42PM 8 RESOLVED IN THE FUTURE WHEN EVERYONE STARTS USING EMR.

12:42PM 9 DO YOU SEE THOSE WORDS?

12:42PM 10 A. I DO SEE THOSE WORDS.

12:42PM 11 Q. OKAY. SO I WANT TO SHIFT TOPICS TO THE FINANCIAL MODELS.

12:43PM 12 IF YOU COULD TURN IN YOUR BINDER TO 1422 -- ACTUALLY, IT'S

12:43PM 13 IN EVIDENCE, SO WE CAN PULL IT UP.

12:43PM 14 IF WE CAN TURN TO PAGE 2 OF THIS EXHIBIT. WE'VE LOOKED AT

12:43PM 15 IT BEFORE, BUT JUST TO ORIENT OURSELVES.

12:43PM 16 ON JANUARY 10TH YOU TOLD MR. BALWANI THAT ONE OF THE

12:43PM 17 THINGS THAT WOULD BE ESPECIALLY HELPFUL IN YOUR DUE DILIGENCE

12:43PM 18 PROCESS WAS TO GET ACCESS TO THE FINANCIAL MODEL.

12:43PM 19 DO YOU SEE THAT?

12:43PM 20 A. I DO, YES.

12:43PM 21 Q. OKAY. AND HE RESPONDS, "I WILL SEND YOU THE MODEL OVER

12:43PM 22 THE WEEKEND."

12:43PM 23 DO YOU SEE THAT?

12:43PM 24 A. I DO.

12:44PM 25 Q. AND MR. BALWANI EVENTUALLY SENT YOU THE EXCEL SPREADSHEET

12:44PM 1 AS YOU TESTIFIED EARLIER; RIGHT?

12:44PM 2 A. THAT'S CORRECT.

12:44PM 3 Q. AND THAT SPREADSHEET ENABLED YOU TO SEE ALL THE

12:44PM 4 ASSUMPTIONS THAT WENT INTO THE MODEL; RIGHT?

12:44PM 5 A. YES.

12:44PM 6 Q. AND THE FORMULAS THAT WERE IMPLEMENTED INTO THE MODEL;

12:44PM 7 RIGHT?

12:44PM 8 A. YES.

12:44PM 9 Q. OKAY. WHAT I'D LIKE TO DO IS SHOW ONLY MR. GROSSMAN

12:44PM 10 EXHIBIT 13720A, AND COUNSEL AND THE COURT, OF COURSE.

12:44PM 11 THE COURT: JUST TO MR. GROSSMAN?

12:44PM 12 MS. WALSH: YES, JUST TO HIM.

12:45PM 13 (PAUSE IN PROCEEDINGS.)

12:45PM 14 BY MS. WALSH:

12:45PM 15 Q. OKAY. DO YOU SEE THAT EXCEL SPREADSHEET ON THE SCREEN,

12:45PM 16 MR. GROSSMAN?

12:45PM 17 A. I DO.

12:45PM 18 Q. AND WE CAN GO THROUGH THE TABS IF YOU WANT, BUT DO YOU

12:45PM 19 RECOGNIZE THAT AS THE EXCEL SPREADSHEET THAT MR. BALWANI SENT

12:45PM 20 YOU IN 2014?

12:45PM 21 A. I BELIEVE THAT IT LOOKS TO ME THAT IT LOOKS LIKE THAT

12:45PM 22 DOCUMENT, YES.

12:45PM 23 Q. OKAY.

12:45PM 24 A. OR THAT FILE.

12:45PM 25 MS. WALSH: YOUR HONOR, WE OFFER 13720A.

12:45PM 1 MR. LEACH: NO OBJECTION, YOUR HONOR.

12:45PM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:45PM 3 (DEFENDANT'S EXHIBIT 13720A WAS RECEIVED IN EVIDENCE.)

12:46PM 4 BY MS. WALSH:

12:46PM 5 Q. OKAY. SO LET ME ASK YOU A COUPLE OF QUESTIONS ABOUT HOW

12:46PM 6 THESE MODELS WORK.

12:46PM 7 SO THE MODEL -- THIS TYPE OF MODEL IS MODELING FUTURE

12:46PM 8 PERFORMANCE; IS THAT FAIR?

12:46PM 9 A. YES.

12:46PM 10 Q. AND THE WAY IT WORKS IS THAT YOU COME UP WITH CERTAIN

12:46PM 11 ASSUMPTIONS ABOUT, FOR EXAMPLE, HOW MANY STORES YOU'RE GOING TO

12:46PM 12 BE IN OR HOW MANY TEST PER PATIENT WILL COME THROUGH THE STORE

12:46PM 13 AS INPUTS INTO THE MODEL; CORRECT?

12:46PM 14 A. I MEAN, THAT'S CERTAINLY ONE WAY TO MODEL THE FUTURE.

12:46PM 15 Q. OKAY. AND IF YOU CHANGE THOSE ASSUMPTIONS, THAT WILL

12:46PM 16 CHANGE THE OUTPUT IN THE MODEL; IS THAT FAIR?

12:46PM 17 A. YES. IT'S JUST MATH. SO IF YOU CHANGE THE -- ANY CELL

12:46PM 18 THAT REFERENCES ANOTHER CELL AND IS A CALCULATION WILL CHANGE

12:46PM 19 IF YOU CHANGE THE UNDERLYING ASSUMPTION.

12:46PM 20 Q. OKAY. SO LET'S TAKE A LOOK AT THE FIRST HALF WHICH IS

12:47PM 21 MACRO ASSUMPTIONS. AND THIS CONTAINED SOME ASSUMPTIONS ABOUT

12:47PM 22 RETAIL PHARMACY MARKET IN THE UNITED STATES.

12:47PM 23 DO YOU SEE THAT?

12:47PM 24 A. YES.

12:47PM 25 Q. AND THERE IS SOME MARKET DATA THAT WAS ALSO INCLUDED?

12:47PM 1 DO YOU SEE THAT IN THE MIDDLE THERE?

12:47PM 2 A. I DO.

12:47PM 3 Q. OKAY. AND THEN IF WE CAN GO TO THE TAB LABELLED THERANOS

12:47PM 4 MARKET ASSUMPTIONS.

12:47PM 5 ON THE TOP LEFT DO YOU SEE RX LOCATIONS? DO YOU SEE THAT?

12:47PM 6 A. YES.

12:47PM 7 Q. OKAY. AND ONE OF THOSE IS WALGREENS; RIGHT?

12:47PM 8 A. YES.

12:47PM 9 Q. AND THEN IF WE SCROLL TO JANUARY 2014, WHICH IS GOING TO

12:48PM 10 BE -- YEAH, THERE YOU GO.

12:48PM 11 DO YOU SEE JANUARY 2014?

12:48PM 12 A. I DO.

12:48PM 13 Q. AND ACROSS FROM WALGREENS FOR RX LOCATIONS IT LISTS 11.

12:48PM 14 DO YOU SEE THAT?

12:48PM 15 A. I DO SEE THAT.

12:48PM 16 Q. AND THERANOS AT THE TIME WAS NOT IN 11 WALGREENS STORES;

12:48PM 17 RIGHT?

12:48PM 18 A. WHAT TIME ARE YOU REFERRING TO?

12:48PM 19 Q. JANUARY 2014.

12:48PM 20 A. I DON'T BELIEVE, I DON'T BELIEVE THEY WERE IN 11 -- I

12:48PM 21 DON'T RECALL WHEN THEY, WHEN THEY EXPANDED TO 11. I DON'T KNOW

12:48PM 22 IF IT WAS JANUARY OR FEBRUARY.

12:48PM 23 Q. WELL, WEREN'T THEY IN THREE STORES IN JANUARY 2014?

12:48PM 24 A. I THINK THAT WAS WHEN -- WHEN YOU ASKED ME THAT QUESTION,

12:48PM 25 I THINK THAT WAS AT THE SECOND MEETING THAT WE HAD ON

12:48PM 1 JANUARY 10TH. AT THAT POINT IN TIME I THINK THEY HAD THREE. I
12:48PM 2 DON'T RECALL HOW MANY THEY HAD AT THIS POINT IN JANUARY.
12:48PM 3 Q. OKAY. BUT IT'S FAIR TO SAY THAT YOU DON'T REMEMBER THEM
12:49PM 4 HAVING 11 STORES AT THAT TIME; IS THAT RIGHT?
12:49PM 5 A. I DON'T REMEMBER BY THE END OF THE MONTH WHAT THEY HAD.
12:49PM 6 Q. OKAY. BUT THAT'S SOMETHING THAT YOU COULD VERIFY ONLINE;
12:49PM 7 RIGHT?
12:49PM 8 A. I GUESS. I GUESS WE COULD.
12:49PM 9 Q. AT THE TIME THAT YOU WERE LOOKING AT THIS MODEL, RIGHT,
12:49PM 10 YOU COULD VERIFY ONLINE HOW MANY STORES THERANOS WAS IN; RIGHT?
12:49PM 11 A. I BELIEVE THEY WOULD HAVE -- I DON'T, I DON'T KNOW -- I
12:49PM 12 ASSUMED THAT'S POSSIBLE, YES.
12:49PM 13 Q. OKAY. AND THEN IF WE LOOK AT THE REVENUE FOR
12:49PM 14 FEBRUARY 2014, WHICH IS COLUMN J, ROW 19.
12:49PM 15 SO ROW 19, DO YOU SEE WHERE IT SAYS REVENUE?
12:50PM 16 A. I DO.
12:50PM 17 Q. YEAH. AND YOU SEE IF YOU CLICK ON ONE OF THOSE CELLS, AT
12:50PM 18 THE TOP THERE'S A FORMULA GENERATING THOSE NUMBERS; RIGHT?
12:50PM 19 A. YES.
12:50PM 20 Q. AND THAT'S SIMILAR TO THE FORMULA THAT I JUST REFERRED TO
12:50PM 21 THAT IF THE FORMULA CHANGES, IT MAY CHANGE THE OUTPUT THAT
12:50PM 22 AFFECTS OTHER CELLS; IS THAT FAIR?
12:50PM 23 A. I MEAN, IT SHOULD, YES.
12:50PM 24 Q. OKAY. AND THEN UNDER RETAIL PHARMACIES IS PHYSICIANS'
12:50PM 25 OFFICES.

12:50PM 1 DO YOU SEE THAT?

12:50PM 2 A. I DO SEE THAT.

12:50PM 3 Q. AND YOU SEE THAT NO REVENUE IS PROJECTED FOR JANUARY OR

12:50PM 4 FEBRUARY 2014.

12:50PM 5 DO YOU SEE THAT?

12:50PM 6 A. YES.

12:50PM 7 Q. OKAY. AND THEN GOING DOWN, DO YOU SEE HOSPITALS

12:50PM 8 (COURIER) ?

12:50PM 9 A. YES.

12:50PM 10 Q. AND NO REVENUE IS PROJECTED FOR JANUARY, FEBRUARY,

12:51PM 11 MARCH 2014 FOR HOSPITALS (COURIER) .

12:51PM 12 DO YOU SEE THAT?

12:51PM 13 A. I DO SEE THAT, YES.

12:51PM 14 Q. AND THEN IF YOU GO TO HOSPITALS (ONSITE) .

12:51PM 15 DO YOU SEE THAT?

12:51PM 16 A. I DO.

12:51PM 17 Q. THERE'S NO REVENUE AT ALL PROJECTED IN 2014.

12:51PM 18 DO YOU SEE THAT?

12:51PM 19 A. I DO.

12:51PM 20 Q. AND THERE'S NONE, NO REVENUE, UNTIL -- PROJECTED UNTIL

12:51PM 21 APRIL 2015; CORRECT?

12:51PM 22 A. THAT IS CORRECT.

12:51PM 23 Q. OKAY. AND THEN IF WE GO BACK, DO YOU SEE DOD IN RED?

12:51PM 24 A. I DO.

12:51PM 25 Q. AND DOD STOOD FOR DEPARTMENT OF DEFENSE.

12:51PM 1 WAS THAT YOUR UNDERSTANDING?

12:51PM 2 A. THAT WAS.

12:51PM 3 Q. AND THAT ROW FOR DOD SAYS TBD; CORRECT?

12:51PM 4 A. CORRECT.

12:51PM 5 Q. AND IT'S TBD ALL OF THE WAY THROUGH THE MODEL; RIGHT?

12:51PM 6 A. YES.

12:51PM 7 Q. THERE'S NO PROJECTED REVENUE LISTED FOR THE DEPARTMENT OF

12:52PM 8 DEFENSE; CORRECT?

12:52PM 9 A. IT'S JUST TBD.

12:52PM 10 Q. RIGHT. SO NO REVENUE IS LISTED?

12:52PM 11 A. YEAH, I SUPPOSE. IT JUST SAYS TO BE DETERMINED.

12:52PM 12 Q. OKAY. BUT THERE'S NOT A NUMBER THERE; IS THAT FAIR?

12:52PM 13 A. I AGREE WITH THAT.

12:52PM 14 Q. OKAY. THEN UNDER DOD YOU SEE THE WORD INTERNATIONAL?

12:52PM 15 A. YES.

12:52PM 16 Q. AND THAT IS ALSO TBD; RIGHT?

12:52PM 17 A. RIGHT.

12:52PM 18 Q. THERE'S NO NUMBER FIGURE FOR REVENUE; RIGHT?

12:52PM 19 A. NO.

12:52PM 20 Q. AND THEN GOING DOWN IT LISTS MINILAB NEW PRODUCTION.

12:52PM 21 DO YOU SEE THAT?

12:52PM 22 A. I DO SEE THAT, YES.

12:52PM 23 Q. OKAY. AND THERE'S NOTHING LISTED FOR JANUARY AND

12:52PM 24 FEBRUARY 2014; RIGHT?

12:52PM 25 A. THAT'S CORRECT.

12:52PM 1 Q. AND THEN CUMULATIVE MINILAB INVENTORY.

12:52PM 2 DO YOU SEE THAT?

12:52PM 3 A. I DO.

12:52PM 4 Q. AND THERE'S NOTHING LISTED FOR JANUARY AND FEBRUARY 2014

12:53PM 5 AS WELL; RIGHT?

12:53PM 6 A. YES.

12:53PM 7 Q. OKAY. THEN IF WE CAN GO TO THE TAB LABELLED PRO FORMA

12:53PM 8 INCOME STATEMENT, IF WE GO TO ROW 17, AGAIN, DOD IS LISTED AS

12:53PM 9 TBD; RIGHT?

12:53PM 10 A. YES.

12:53PM 11 Q. AND THEN THERE'S SOMETHING CALLED OPERATING EXPENSES R&D

12:53PM 12 COSTS.

12:53PM 13 DO YOU SEE THAT?

12:53PM 14 A. I DO.

12:53PM 15 Q. AND THEN WHAT IS LISTED THERE IS KILLER SOFTWARE APPS AND

12:53PM 16 SUPPORT.

12:53PM 17 DO YOU SEE THAT?

12:53PM 18 A. I DO.

12:53PM 19 Q. AND THEN THE AMOUNT FOR RESEARCH AND DEVELOPMENT COST

12:53PM 20 INCREASES EVERY YEAR, DOESN'T IT?

12:53PM 21 A. YES, IT DOES.

12:53PM 22 Q. OKAY. ALL RIGHT. WE CAN TAKE THAT DOWN.

12:54PM 23 IF YOU CAN TURN NOW TO 1477.

12:54PM 24 A. YOU KNOW WHAT, I DON'T THINK I HAVE 14077.

12:54PM 25 Q. NO. IT'S 1477.

12:54PM 1 A. OKAY.

12:54PM 2 Q. AND SO THIS IS AN EMAIL FROM YOU TO MR. BALWANI.

12:54PM 3 DO YOU SEE THAT?

12:54PM 4 A. YES, I DO.

12:54PM 5 Q. ACTUALLY, I THINK THIS IS IN EVIDENCE. SO WE CAN PULL IT

12:54PM 6 UP.

12:54PM 7 RIGHT. SO MR. LEACH ASKED YOU ABOUT THIS. THESE WERE

12:55PM 8 YOUR QUESTIONS REGARDING THE FINANCIAL MODEL.

12:55PM 9 DO YOU SEE THAT?

12:55PM 10 A. I DO.

12:55PM 11 Q. OKAY. AND YOU POSE A LOT OF DIFFERENT QUESTIONS ABOUT THE

12:55PM 12 MODEL; RIGHT?

12:55PM 13 A. YES.

12:55PM 14 Q. AND ABOUT TWO-THIRDS OF THE WAY DOWN YOU SAY, "IN MODEL

12:55PM 15 YOU HAVE 11 ACTIVE SITES IN JANUARY GOING TO 21 IN FEBRUARY,

12:55PM 16 AND THEN 41 IN APRIL. IS THAT SCHEDULE STILL REALISTIC?"

12:55PM 17 DO YOU SEE THAT?

12:55PM 18 A. I DO.

12:55PM 19 Q. AND THEN YOU ASK, "HOW DO YOU DEAL WITH THE VENOUS DRAW

12:55PM 20 ISSUE. I HAD TESTS DONE TODAY IN PALO ALTO WALGREENS AND HAD

12:55PM 21 TO GET VENOUS DRAW. I WASN'T OFFERED FINGERSTICK."

12:55PM 22 AND THEN YOU GO ON TO ASK QUESTIONS ABOUT A CPT AND A

12:55PM 23 LICENSED LPT.

12:55PM 24 AND THEN YOU ASK, "IN REAL WORLD, WHAT PERCENT OF PATIENTS

12:55PM 25 NEED A VENOUS BLOOD DRAW?"

12:55PM 1 DO YOU SEE THAT?

12:56PM 2 A. I DO.

12:56PM 3 Q. OKAY. WE CAN TAKE THAT DOWN.

12:56PM 4 LET'S GO TO 5441.

12:56PM 5 AND THIS IS IN EVIDENCE, SO WE CAN PULL IT UP.

12:56PM 6 THIS IS THE EMAIL THAT YOU TESTIFIED ABOUT ON DIRECT WHERE
12:56PM 7 YOU ARE SENDING ADAM CLAMMER THE THERANOS SPREADSHEET; IS THAT
12:56PM 8 RIGHT?

12:56PM 9 A. YES.

12:56PM 10 Q. AND YOU SAY, "CELL D113 ON PFM REV MODEL IS SCENARIO. 1,
12:56PM 11 2, 3 FOR THE BEAR, BASE, BULL."

12:56PM 12 DO YOU REMEMBER THAT?

12:56PM 13 A. YES.

12:56PM 14 Q. AND I THINK YOU TESTIFIED TO THIS ON DIRECT, BUT YOU BUILT
12:56PM 15 ESSENTIALLY THREE DIFFERENT SCENARIOS THAT WAS YOUR ANALYSIS OF
12:56PM 16 THERANOS; RIGHT? THREE DIFFERENT ECONOMIC SCENARIOS; IS THAT
12:57PM 17 RIGHT?

12:57PM 18 A. THREE DIFFERENT FORECASTS.

12:57PM 19 Q. THREE DIFFERENT FORECASTS. OKAY.

12:57PM 20 AND THE BEAR WAS THE MOST PESSIMISTIC IN THE FORECAST, I
12:57PM 21 GUESS. IS THAT FAIR?

12:57PM 22 A. OF THE THREE FORECASTS, THE BEAR WAS THE LOWEST.

12:57PM 23 Q. RIGHT. AND THE BULL WAS THE HIGHEST; RIGHT?

12:57PM 24 A. THAT'S RIGHT.

12:57PM 25 Q. AND THE BASE WAS IN THE MIDDLE; RIGHT?

12:57PM 1 A. YES.

12:57PM 2 Q. OKAY. AND SO IF WE COULD SHOW JUST MR. GROSSMAN, 4093,

12:57PM 3 AND COUNSEL, OF COURSE.

12:57PM 4 DO YOU SEE THAT, MR. GROSSMAN?

12:57PM 5 A. I DO SEE THAT, YES.

12:57PM 6 Q. OKAY. IS THIS PFM'S MODEL THAT PFM BUILT?

12:57PM 7 A. IT LOOKS LIKE IT, YES.

12:57PM 8 Q. AND THIS MODEL WAS USED IN MAKING THE DECISION WHETHER OR

12:58PM 9 NOT TO INVEST IN THERANOS; IS THAT RIGHT?

12:58PM 10 A. YES.

12:58PM 11 MS. WALSH: YOUR HONOR, WE OFFER 4093.

12:58PM 12 MR. LEACH: NO OBJECTION, YOUR HONOR.

12:58PM 13 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:58PM 14 (GOVERNMENT'S EXHIBIT 4093 WAS RECEIVED IN EVIDENCE.)

12:58PM 15 BY MS. WALSH:

12:58PM 16 Q. SO IF WE CAN SHOW -- YEAH, THE BLUE TABS ALONG THE BOTTOM,

12:58PM 17 THOSE WERE IMPORTED FROM THERANOS'S MODEL; IS THAT RIGHT?

12:58PM 18 A. I'M NOT SURE.

12:58PM 19 MR. LEACH: YOUR HONOR.

12:58PM 20 THE CLERK: MY APOLOGIES.

12:58PM 21 THE COURT: OH, THE MONITOR.

12:58PM 22 ARE THEY ON NOW? NOT YET. OKAY.

12:58PM 23 ARE YOU GOOD? THANK YOU.

12:58PM 24 BY MS. WALSH:

12:58PM 25 Q. SO LET'S LOOK AT ONE OF THOSE TABS, AND MAYBE THAT WILL

12:59PM 1 HELP YOU.

12:59PM 2 LET'S LOOK AT THE BALANCE SHEET TAB.

12:59PM 3 DO YOU RECOGNIZE THIS AS NUMBERS FROM THERANOS THAT YOU

12:59PM 4 REFERRED TO?

12:59PM 5 A. IT LOOKS LIKE THAT. YES, IT LOOKS FAMILIAR.

12:59PM 6 Q. OKAY. SO LET'S GO DOWN TO ROW 34, WHICH IS LABELLED

12:59PM 7 COMMON STOCK.

12:59PM 8 DO YOU SEE THAT?

12:59PM 9 A. I DO.

12:59PM 10 Q. AND THE AMOUNT OF COMMON STOCK THAT WAS ISSUED WAS

12:59PM 11 19,806,000.

12:59PM 12 DO YOU SEE THAT?

12:59PM 13 A. I DO.

12:59PM 14 Q. OKAY. AND THESE NUMBERS NEED TO BE MULTIPLIED BY 1,000;

12:59PM 15 RIGHT?

12:59PM 16 A. I'M NOT SURE.

12:59PM 17 Q. CAN WE GO TO THE TOP OF THIS. CAN YOU SEE HOW --

12:59PM 18 A. YES.

12:59PM 19 Q. AND IT'S FAIR TO SAY THAT ALL OF THESE HAVE TO BE

12:59PM 20 MULTIPLIED BY A THOUSAND TO BE ACCURATE; RIGHT?

12:59PM 21 A. YES.

12:59PM 22 Q. AND SO IN COMMON STOCK IT SHOWS 19,806,000; RIGHT?

01:00PM 23 A. YES.

01:00PM 24 Q. AND THEN IN PREFERRED STOCK, THE ROW UNDER THAT IT SHOWS

01:00PM 25 206,138,000; RIGHT?

01:00PM 1 A. YES.

01:00PM 2 Q. AND IF YOU ADD THE TWO OF THOSE TOGETHER, IT'S ROUGHLY

01:00PM 3 224 MILLION; RIGHT?

01:00PM 4 A. YES.

01:00PM 5 Q. OKAY. AND THOSE TWO ROWS MEAN THAT THERANOS HAD RAISED

01:00PM 6 ABOUT 225 MILLION BY ISSUING STOCK; CORRECT?

01:00PM 7 A. I'M NOT SURE. I'M NOT AN EXPERT ON BALANCE SHEET AND

01:00PM 8 ACCOUNTING FOR THIS, SO I DON'T KNOW FOR SURE.

01:00PM 9 Q. DON'T YOU REVIEW BALANCE SHEETS AS PART OF YOUR DAILY

01:00PM 10 BUSINESS?

01:00PM 11 A. WE DO, BUT IT GETS PRETTY COMPLICATED WHEN IT COMES TO THE

01:00PM 12 ISSUING STOCK AND BOOK VALUE, ACCUMULATED PAID IN CAPITAL,

01:00PM 13 WHICH THEY DON'T HAVE LISTED HERE.

01:00PM 14 SO, I MEAN, IT'S HARD FOR ME TO ANSWER JUST LOOKING AT

01:00PM 15 THIS. BUT THAT -- I DO AGREE THAT IT REPRESENTS \$225 MILLION

01:01PM 16 BETWEEN THOSE TWO LINES, OR I GUESS ROW 34 AND ROW 35.

01:01PM 17 Q. AND THAT CORRESPONDS TO STOCK, THERANOS STOCK; RIGHT?

01:01PM 18 A. YES.

01:01PM 19 Q. OKAY. IF WE CAN LOOK AT LINE 36, WHICH IS ACCUMULATED

01:01PM 20 DEFICIT.

01:01PM 21 DO YOU SEE THAT?

01:01PM 22 A. I DO.

01:01PM 23 Q. AND ACCUMULATED DEFICIT IS HOW MUCH MONEY A COMPANY LOSES

01:01PM 24 SINCE ITS INCEPTION; RIGHT?

01:01PM 25 A. I BELIEVE THAT'S RIGHT, BUT, AGAIN, I'M NOT AN ACCOUNTING

01:01PM 1 EXPERT. BUT, YES, I BELIEVE THAT'S, THAT'S RIGHT.

01:01PM 2 Q. OKAY. AND WHAT THIS SHOWS IS AN ACCUMULATED DEFICIT OF

01:01PM 3 250,527,000; RIGHT?

01:01PM 4 A. YES.

01:01PM 5 Q. AND SO IN ADDITION TO THE MODEL THAT THERANOS GAVE YOU,

01:01PM 6 YOUR TEAM COLLECTED MORE INFORMATION; IS THAT FAIR?

01:02PM 7 A. YES.

01:02PM 8 Q. OKAY. AND THAT WAS SEPARATE AND APART FROM THE NUMBERS

01:02PM 9 THAT THERANOS PROVIDED TO YOU; CORRECT?

01:02PM 10 A. ARE YOU REFERRING SPECIFICALLY TO THE MODEL OR JUST IN

01:02PM 11 GENERAL?

01:02PM 12 Q. FOCUSING ON THE FINANCIALS.

01:02PM 13 A. OKAY.

01:02PM 14 Q. SO WHAT I'M GOING TO DIRECT YOU TO IS THE ORANGE TABS.

01:02PM 15 LET'S LOOK AT THOSE.

01:02PM 16 IF WE CAN LOOK AT THE TABLE LABELLED HIGH GROWTH COMPS.

01:02PM 17 SO THIS IS INFORMATION THAT YOUR TEAM PUT INTO THIS MODEL;

01:02PM 18 RIGHT?

01:02PM 19 A. YES.

01:02PM 20 Q. OKAY. AND IT SHOWS THE PERFORMANCE OF OTHER COMPANIES IN

01:02PM 21 THE MARKET; RIGHT?

01:02PM 22 A. THESE ARE OTHER, THESE ARE OTHER COMPANIES, WHAT WE REFER

01:02PM 23 TO AS DISRUPTIVE OPEN ENDED TECHNOLOGY COMPANIES.

01:02PM 24 Q. RIGHT. AND YOU'RE PUTTING THOSE INTO YOUR MODEL; RIGHT?

01:02PM 25 A. WELL, THEY'RE NOT IN OUR FORECASTS, THE BASE CASE, THE

01:02PM 1 BEAR CASE, THE BULL CASE.

01:02PM 2 THIS IS, THIS IS A SEPARATE TAB THAT JUST LOOKS AT HOW

01:03PM 3 SIMILAR DISRUPTIVE, EXCITING, OPEN ENDED BUSINESSES, HOW THEY

01:03PM 4 ARE VALUED AND HOW THEY GREW. THAT'S WHAT THIS TAB IS.

01:03PM 5 Q. OKAY. BUT IT REPRESENTS ANOTHER SET OF DATA THAT WAS

01:03PM 6 AVAILABLE TO YOU THAT WENT INTO THE MIX OF YOUR EVALUATION OF

01:03PM 7 THE FINANCIAL OPPORTUNITY OF INVESTING AT THERANOS; RIGHT?

01:03PM 8 A. YEAH. THIS WAS MORE AROUND VALUATION, HOW TO THINK ABOUT

01:03PM 9 HOW TO VALUE THERANOS WHEN, YOU KNOW, IN THREE, FOUR, FIVE, SIX

01:03PM 10 YEARS IT WAS A BIGGER COMPANY.

01:03PM 11 Q. OKAY. AND SO YOU USED THESE DATA POINTS TO HELP YOU

01:03PM 12 DETERMINE HOW TO VALUE THERANOS; CORRECT?

01:03PM 13 A. YES.

01:03PM 14 Q. OKAY. IF WE CAN THEN GO TO THE TAB LABELLED CHARTS.

01:03PM 15 DO YOU SEE THAT?

01:03PM 16 A. I DO.

01:03PM 17 Q. AND THIS TAB INCLUDES STATISTICS ABOUT THE U.S. LAB

01:03PM 18 MARKET; RIGHT?

01:03PM 19 A. YES, IT APPEARS TO.

01:04PM 20 Q. OKAY. AND THESE WERE OTHER DATA POINTS THAT YOU WERE

01:04PM 21 USING IN YOUR ANALYSIS; RIGHT?

01:04PM 22 A. YEAH. I DON'T KNOW -- I DON'T THINK WE REALLY USED THIS.

01:04PM 23 I THINK THIS WAS A -- THIS WAS SOMETHING THAT WE INCLUDED IN A

01:04PM 24 PRESENTATION. THIS WAS A SLIDE FROM A PRESENTATION THAT WE

01:04PM 25 HAD.

01:04PM 1 SO I DON'T THINK IT ACTUALLY TIED BACK TO THE, TO THE
01:04PM 2 FINANCIAL MODEL THAT WE BUILT.

01:04PM 3 Q. OKAY. BUT THE TOTAL U.S. LAB MARKET WAS RELEVANT IN YOUR
01:04PM 4 CONSIDERATION OF THE INVESTMENT, WASN'T IT?

01:04PM 5 A. I MEAN, ONLY IN THE SENSE THAT IT'S JUST GOOD TO HAVE
01:04PM 6 THOSE KIND OF BIG PICTURE NUMBERS HANDY, BUT IT WASN'T DIRECTLY
01:04PM 7 TIED INTO ANY OF THE FORECASTS, OR ME, OF THE MODELING WE DID
01:04PM 8 OF THERANOS AS A BUSINESS.

01:04PM 9 Q. OKAY. EVEN IF IT WASN'T DIRECTLY TIED IN, IT WAS RELEVANT
01:04PM 10 TO YOUR ANALYSIS AS TO WHAT THE TOTAL U.S. LAB MARKET WAS;
01:04PM 11 RIGHT?

01:04PM 12 A. YEAH, WE ALWAYS WANTED TO KNOW WHAT THE TOTAL SIZE OF THE
01:05PM 13 MARKET IS.

01:05PM 14 Q. OKAY. AND THEN IF WE CAN GO TO THE TAB LABELLED CENSUS
01:05PM 15 DATA.

01:05PM 16 THIS TAB CONTAINS, YOU SEE AT THE TOP, ANNUAL ESTIMATES OF
01:05PM 17 POPULATION OF METROPOLITAN, MICROPOLITAN STATISTICAL AREAS.

01:05PM 18 DO YOU SEE THAT?

01:05PM 19 A. I DO.

01:05PM 20 Q. AND THIS IS THE CENSUS DATA FOR LARGE AND SMALL CITIES
01:05PM 21 ACROSS THE UNITED STATES; RIGHT?

01:05PM 22 A. YES.

01:05PM 23 Q. AND THIS WAS ANOTHER DATA POINT THAT WAS RELEVANT IN THE
01:05PM 24 WHOLE MIX OF INFORMATION THAT YOU WERE CONSIDERING; CORRECT?

01:05PM 25 A. YES.

01:05PM 1 Q. THEN IF WE CAN GO TO THE GREEN TABS.

01:05PM 2 LET'S GO TO THE ONE PFM REV MODEL BOTTOMS UP.

01:05PM 3 DO YOU SEE THAT?

01:05PM 4 A. I DO.

01:05PM 5 Q. OKAY. AND THIS CONTAINS SOME OF THE DATA PERTAINING TO
01:06PM 6 THE BEAR, BASE, AND BULL ESTIMATES.

01:06PM 7 DO YOU SEE THOSE REFERENCES AT THE BOTTOM OF THE SCREEN?

01:06PM 8 A. I DO.

01:06PM 9 Q. OKAY. IF WE CAN THEN GO TO THE TAB LABELLED STORE BUILD.

01:06PM 10 OKAY. THIS IS AN ANALYSIS OF THERANOS'S POTENTIAL KIND OF
01:06PM 11 INFILTRATION IN THESE MARKETS; RIGHT?

01:06PM 12 A. THIS IS, THIS IS AN ANALYSIS THAT LOOKS AT OUR REVENUE
01:06PM 13 FORECAST, WHICH WE USED -- WE BUILT OUR REVENUE FORECAST -- THE
01:06PM 14 COMPANY GAVE US TWO YEARS OF FINANCIAL INFORMATION, '14 AND
01:06PM 15 '15, AND WE USED THAT TO HELP US MODEL THE COMPANY IN '14 AND
01:06PM 16 '15.

01:06PM 17 BEYOND THAT, WE WERE ON OUR OWN. SO WE MADE SOME
01:06PM 18 ASSUMPTIONS ABOUT PENETRATION INTO THE TOTAL METROPOLITAN
01:06PM 19 MARKETS THAT WE EXPECTED TO ROLL OUT, AND THAT'S HOW WE
01:07PM 20 FORECAST REVENUE.

01:07PM 21 AND THEN JUST TO SORT OF CHECK, WE TOOK THOSE REVENUE
01:07PM 22 FORECASTS AND COMPARED THAT TO THE TOTAL NUMBER OF THERANOS --
01:07PM 23 I'M SORRY, THE TOTAL NUMBER OF WALGREENS AND SAFEWAY STORES IN
01:07PM 24 THOSE 18 URBAN AREAS THAT WE ASSUMED THEY WERE ROLLING OUT IN.

01:07PM 25 SO THIS ANALYSIS IS JUST A SECONDARY ANALYSIS COMPARING

01:07PM 1 THE REVENUE, WHICH WE MODEL, VERSUS THE TOTAL NUMBER OF RETAIL
01:07PM 2 STORES THAT THEY HAD IN THOSE PARTICULAR MARKETS.

01:07PM 3 AND WE USED THE, WE USED THE DATA YOU REFERRED TO BEFORE
01:07PM 4 TO HELP US DRIVE THE -- CREATE THESE REVENUE ASSUMPTIONS BASED
01:07PM 5 ON THE TOTAL NUMBER OF PEOPLE, AND THEN THE AVERAGE NUMBER OF
01:07PM 6 TESTS PER PEOPLE PER -- NOT PEOPLE, PER PERSON. THAT WAS HOW
01:07PM 7 WE MODELLED THE COMPANY BEYOND 2015.

01:07PM 8 Q. OKAY. AND THIS WAS A SLIGHTLY DIFFERENT WAY OF LOOKING AT
01:07PM 9 THE DATA IN ORDER TO FORECAST; IS THAT FAIR?

01:07PM 10 A. YEAH. WE WANTED TO -- WE -- YES, IT WAS A DIFFERENT WAY
01:08PM 11 OF FORECASTING REVENUES USING THE TOTAL NUMBER OF PEOPLE IN
01:08PM 12 THESE URBAN MARKETS THAT WE WERE ASSUMING WERE GOING TO BE
01:08PM 13 ROLLED OUT OVER THE NEXT COUPLE OF YEARS.

01:08PM 14 Q. OKAY. SO LET'S GO NEXT TO THE TAB LABELLED VALUATION.
01:08PM 15 THIS IS MORE ANALYSIS THAT YOUR TEAM DID; RIGHT?

01:08PM 16 A. YES.

01:08PM 17 Q. AND LET'S GO TO ROW 19, COLUMN C, THERANOS NET REVENUE.

01:08PM 18 AND WHAT IS PROJECTED IS 249 MILLION NET REVENUE FOR 2014;
01:08PM 19 RIGHT?

01:08PM 20 A. YES.

01:08PM 21 Q. OKAY. AND THEN ROW 19, COLUMN D IS FOR 2015. AND WHAT IS
01:08PM 22 PROJECTED IS 1.558 BILLION NET REVENUE FOR 2015; RIGHT?

01:09PM 23 A. YES.

01:09PM 24 Q. AND YOU'RE MAKING THESE PROJECTIONS IN EARLY 2014;
01:09PM 25 CORRECT?

01:09PM 1 A. THAT'S CORRECT.

01:09PM 2 Q. AND YOU WERE AWARE AT THE TIME THAT THERANOS HAD

01:09PM 3 \$25 MILLION IN REVENUE AT THAT TIME; RIGHT?

01:09PM 4 A. YES.

01:09PM 5 Q. AND SO YOU WERE PROJECTING GROWTH IN 2014 TO GO FROM

01:09PM 6 25 MILLION TO 250 MILLION; IS THAT RIGHT?

01:09PM 7 A. YES.

01:09PM 8 Q. AND THEN IN 2015 YOU WERE PROJECTING GROWTH TO GO FROM

01:09PM 9 250 MILLION TO 1.56 BILLION; IS THAT CORRECT?

01:09PM 10 A. THAT'S CORRECT.

01:09PM 11 Q. AND THAT LAST INCREASE WAS AN INCREASE OF 525 PERCENT; IS

01:09PM 12 THAT RIGHT?

01:09PM 13 A. YES.

01:09PM 14 Q. OKAY. LET'S GO TO THE ROW ON THIS TAB, ROW 3, COLUMN B,

01:09PM 15 WHICH IS TOTAL VALUE.

01:09PM 16 DO YOU SEE THAT?

01:09PM 17 A. I DO.

01:10PM 18 Q. OKAY. AND SO ACCORDING TO YOUR MODEL, YOU ASSESS THE

01:10PM 19 TOTAL VALUE OF THERANOS TO BE \$20.3 BILLION; IS THAT RIGHT?

01:10PM 20 A. WELL, THIS IS THE U.S. PORTION OF THEIR BUSINESS, YES.

01:10PM 21 Q. RIGHT.

01:10PM 22 A. YOU'RE ASSUMING THAT -- WE'RE NOT INCLUDING ANY OF THE

01:10PM 23 OTHER INTERNATIONAL MARKETS IN THIS MODEL. THIS IS JUST THE

01:10PM 24 U.S. RETAIL HOSPITAL, HOSPITAL (COURIER), PHARMA SERVICES, AND

01:10PM 25 THE PHYSICIAN OFFICE BUSINESS.

01:10PM 1 Q. RIGHT. BECAUSE THE INTERNATIONAL, THERANOS TOLD YOU OR
01:10PM 2 INDICATED THAT THERE WAS NO REVENUE EXPECTED ON THAT; RIGHT?

01:10PM 3 A. THEY -- THAT'S NOT -- I DON'T THINK THAT'S QUITE ACCURATE.
01:10PM 4 I THINK WHAT THEY TOLD US WAS THAT THERE WAS NO NEAR TERM
01:10PM 5 REVENUE.

01:10PM 6 BUT EVEN IN OUR SECOND MEETING, THEY EXPLAINED A MAJOR
01:10PM 7 INITIATIVE TO PARTNER WITH EUROPEAN RESELLERS AND LAUNCH THEIR
01:11PM 8 SERVICE IN MULTIPLE EUROPEAN COUNTRIES.

01:11PM 9 SO OVER THE COURSE OF THIS MODEL, WHICH REALLY GOES OUT
01:11PM 10 FOR MANY YEARS, THE EUROPEAN OPPORTUNITY, THE GLOBAL
01:11PM 11 OPPORTUNITY WAS AN ENORMOUS PART OF THE VALUE HERE. BUT WE
01:11PM 12 WERE NOT INCLUDING THAT IN THIS ANALYSIS HERE.

01:11PM 13 SO TO ANSWER THAT QUESTION, THAT 20 BILLION WAS THE VALUE
01:11PM 14 OF THE U.S. BUSINESS. THE 20 BILLION IN CELL B3, WAS JUST U.S.
01:11PM 15 PART OF THERANOS.

01:11PM 16 Q. RIGHT. IT DID NOT INCLUDE INTERNATIONAL; RIGHT?

01:11PM 17 A. NO.

01:11PM 18 Q. AND PFM'S INVESTMENT IN THAT C2 ROUND THAT WE LOOKED AT ON
01:11PM 19 WEDNESDAY, THAT WAS AT \$17 A SHARE; CORRECT?

01:11PM 20 A. I BELIEVE THAT'S RIGHT, YES.

01:11PM 21 Q. AND THERANOS'S VALUATION BASED ON \$17 A SHARE WAS
01:11PM 22 \$9 BILLION; CORRECT?

01:11PM 23 A. I BELIEVE THAT'S, THAT'S ROUGHLY RIGHT, YES.

01:11PM 24 Q. OKAY. I WANTED TO ASK YOU ONE MORE THING ABOUT YOUR
01:12PM 25 MODEL. THERE WAS NO ASSUMPTION IN THERE OR PROJECTION BASED ON

01:12PM 1 THERANOS DOING ANY WORK WITH THE MILITARY; IS THAT RIGHT?

01:12PM 2 A. I DON'T BELIEVE WE INCLUDED THE MILITARY, EVEN THOUGH, AS

01:12PM 3 YOU HIGHLIGHTED A MOMENT AGO, THEY HAD TBD IN THEIR MODEL --

01:12PM 4 Q. OKAY.

01:12PM 5 A. -- THAT THEY SENT US.

01:12PM 6 Q. OKAY.

01:12PM 7 A. BUT WE DID INCLUDE THE PHARMA SERVICES REVENUE. OBVIOUSLY

01:12PM 8 YOU CAN SEE THAT THERE.

01:12PM 9 Q. BUT NO MILITARY; RIGHT?

01:12PM 10 A. THAT'S RIGHT.

01:12PM 11 Q. OKAY. WE CAN TAKE THAT MODEL DOWN.

01:12PM 12 OKAY. SO MR. BALWANI PROVIDED YOU WITH A SLIDE DECK THAT

01:12PM 13 WAS PRESENTED IN THE THERANOS MEETING; RIGHT?

01:12PM 14 A. YES.

01:12PM 15 Q. AND HE PRESENTED -- HE SENT YOU THE EXCEL VERSION OF THE

01:12PM 16 SPREADSHEET SO YOU COULD SEE ALL OF THE ASSUMPTIONS BEHIND HIS

01:13PM 17 NUMBERS; CORRECT?

01:13PM 18 A. YES.

01:13PM 19 Q. AND HE ANSWERED QUESTIONS FOR YOU WHEN YOU HAD QUESTIONS;

01:13PM 20 RIGHT?

01:13PM 21 A. YES.

01:13PM 22 Q. AND YOU SPOKE TO OTHER PEOPLE BESIDES MR. BALWANI AND

01:13PM 23 MS. HOLMES; RIGHT?

01:13PM 24 A. YES.

01:13PM 25 Q. YOU SPOKE TO A PERSON NAMED CHANNING ROBERTSON; IS THAT

01:13PM 1 CORRECT?

01:13PM 2 A. YES.

01:13PM 3 Q. AND YOU SPOKE TO, I GUESS IT'S DR. ROBERTSON, TWO

01:13PM 4 DIFFERENT TIMES, RIGHT, BEFORE YOUR INVESTMENT?

01:13PM 5 A. I BELIEVE THAT'S RIGHT.

01:13PM 6 Q. OKAY. SO LET'S TAKE A LOOK AT 7398.

01:13PM 7 DO YOU SEE THAT?

01:13PM 8 A. OH, I'M SORRY.

01:13PM 9 Q. AND THIS IS AN EMAIL BETWEEN YOU AND DAVID BRADY ON

01:13PM 10 JANUARY 18TH; RIGHT?

01:13PM 11 A. YES.

01:13PM 12 Q. AND IT'S REGARDING -- AND THE SUBJECT LINE IS COMPANY;

01:14PM 13 RIGHT?

01:14PM 14 A. YES.

01:14PM 15 Q. AND COMPANY REFERS TO THERANOS; CORRECT?

01:14PM 16 A. YES.

01:14PM 17 Q. OKAY. AND IS THIS AN EMAIL WHERE YOU WERE GETTING

01:14PM 18 INFORMATION ABOUT DR. ROBERTSON?

01:14PM 19 A. I MEAN, I'M GETTING HIS CELL PHONE INFORMATION IF THAT'S

01:14PM 20 HOPEFULLY RESPONSIVE TO YOUR QUESTION, AND IT'S ABOUT WHERE HE

01:14PM 21 IS AT THAT POINT IN TIME.

01:14PM 22 Q. SURE. OKAY.

01:14PM 23 AND YOU KNEW THAT, THAT DR. ROBERTSON WAS A PROFESSOR AT

01:14PM 24 STANFORD UNIVERSITY; RIGHT?

01:14PM 25 A. YES.

01:14PM 1 Q. AND HE WAS A PROFESSOR OF CHEMICAL ENGINEERING; CORRECT?

01:14PM 2 A. I BELIEVE THAT'S RIGHT, YES.

01:14PM 3 Q. AND YOU KNEW THAT HE IS SOMEONE WHO HELPED

01:14PM 4 ELIZABETH HOLMES START THERANOS; RIGHT?

01:14PM 5 A. YES.

01:14PM 6 Q. OKAY. AND HE HAD BEEN ON THE STANFORD FACULTY FOR MANY

01:14PM 7 DECADES; CORRECT?

01:14PM 8 A. I DON'T KNOW HOW LONG, BUT I BELIEVE THAT'S ACCURATE.

01:15PM 9 Q. OKAY. AND YOU KNEW DR. ROBERTSON WAS ALSO ON THE BOARD AT

01:15PM 10 THERANOS; RIGHT?

01:15PM 11 A. I'M NOT SURE IF I KNEW THAT AT THAT POINT IN TIME, BUT I

01:15PM 12 KNEW HE WAS INVOLVED WITH THE COMPANY.

01:15PM 13 Q. OKAY. AND HE WAS A WELL RESPECTED SCIENTIST; RIGHT?

01:15PM 14 A. YES.

01:15PM 15 Q. AND HE HAD BEEN INVOLVED IN OTHER HEALTH CARE STARTUPS.

01:15PM 16 IS THAT FAIR?

01:15PM 17 A. YES.

01:15PM 18 Q. AND YOU RELIED ON THE INFORMATION THAT DR. ROBERTSON

01:15PM 19 PROVIDED TO YOU; IS THAT RIGHT?

01:15PM 20 A. YES.

01:15PM 21 Q. OKAY. ALL RIGHT. IF YOU COULD TURN TO EXHIBIT 20200.

01:16PM 22 A. OKAY.

01:16PM 23 Q. OKAY. AND JUST TURN TO PAGE -- ACTUALLY, IF YOU COULD

01:16PM 24 TURN TO PAGE 1 OF THE EXHIBIT.

01:16PM 25 YOU SAID YOU REMEMBERED HAVING TWO CALLS WITH

01:16PM 1 DR. ROBERTSON; RIGHT?

01:16PM 2 A. YES.

01:16PM 3 Q. AND ONE WAS IN JANUARY; CORRECT?

01:16PM 4 A. YES.

01:16PM 5 Q. AND THE OTHER ONE WAS IN FEBRUARY; RIGHT?

01:16PM 6 A. I BELIEVE THAT'S RIGHT.

01:16PM 7 Q. BUT BOTH WERE BEFORE YOU MADE YOUR INVESTMENT; CORRECT?

01:16PM 8 A. I BELIEVE THAT'S RIGHT.

01:16PM 9 Q. OKAY. AND IF YOU CAN TURN TO PAGE 5.

01:16PM 10 A. OKAY.

01:16PM 11 Q. AND DR. ROBERTSON TOLD YOU DURING YOUR SECOND CALL WITH

01:17PM 12 HIM THAT THERANOS WAS WAY BEYOND PROOF OF CONCEPT.

01:17PM 13 DID HE TELL YOU THAT?

01:17PM 14 A. YES.

01:17PM 15 Q. AND THAT WENT INTO -- THAT WAS ANOTHER DATA POINT IN YOU

01:17PM 16 MAKING YOUR DECISION TO INVEST; RIGHT?

01:17PM 17 A. YES.

01:17PM 18 Q. AND HE ALSO SAID THE TECHNOLOGY WORKS; RIGHT?

01:17PM 19 A. YES.

01:17PM 20 Q. OKAY. AND HE ALSO SAID THAT IT'S --

01:17PM 21 MR. LEACH: YOUR HONOR, I HAVE A HEARSAY OBJECTION.

01:17PM 22 I THINK THIS IS BEING OFFERED FOR A DIFFERENT PURPOSE, AND IF

01:17PM 23 THAT'S THE CASE, THEN I HAVE NO OBJECTION.

01:17PM 24 THE COURT: ARE YOU MOVING THIS EXHIBIT INTO

01:17PM 25 EVIDENCE?

01:17PM 1
01:17PM 2
01:17PM 3
01:17PM 4
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01:17PM 6
01:17PM 7
01:17PM 8
01:17PM 9
01:18PM 10
01:18PM 11
01:18PM 12
01:18PM 13
01:18PM 14
01:18PM 15
01:18PM 16
01:18PM 17
01:18PM 18
01:18PM 19
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01:18PM 21
01:18PM 22
01:18PM 23
01:18PM 24
01:19PM 25

MS. WALSH: NO.

MR. LEACH: IT'S TO THE PREVIOUS QUESTION ABOUT --
THE COURT: RIGHT.

THEN THE PREVIOUS QUESTION CALLED FOR HEARSAY.

MS. WALSH: YOUR HONOR, IT'S REALLY OFFERED FOR A
NONHEARSAY PURPOSE, WHICH IS THIS IS MORE INFORMATION THAT
MR. GROSSMAN IS GETTING IN MAKING A DECISION WHETHER TO INVEST
IN THERANOS.

IT'S NOT OFFERED FOR THE TRUTH. IT'S WHAT THE EFFECT IT
HAD ON HIS STATE OF MIND IN MAKING THE DECISION WHETHER OR NOT
TO INVEST.

MR. LEACH: I HAVE NO ISSUE WITH THAT, YOUR HONOR.

THE COURT: SO, LADIES AND GENTLEMEN, IN RESPONSE TO
MR. GROSSMAN'S PREVIOUS ANSWER TO THE QUESTION OF WHAT
DR. ROBERTSON TOLD HIM, THAT RESPONSE IS NOT IN EVIDENCE FOR
THE TRUTH OF THE MATTER ASSERTED BY THE DOCTOR, NOR HIS
OPINIONS.

IT'S OFFERED SOLELY FOR THE IMPACT AND EFFECT ON
MR. GROSSMAN IN REGARDS TO ACCUMULATION OF INFORMATION
REGARDING THE DECISION TO INVEST AND FOR THAT PURPOSE ONLY.
BY MS. WALSH:

Q. AND SO, MR. GROSSMAN, DR. ROBERTSON SAID THERANOS IS WAY
BEYOND PROOF OF CONCEPT; RIGHT?

A. HE DID SAY THAT.

Q. AND HE TOLD YOU THAT HIS VIEW WAS THE TECHNOLOGY WORKED;

01:19PM 1 RIGHT?

01:19PM 2 A. THAT WAS HIS GENERAL MESSAGE, YES.

01:19PM 3 Q. AND HE TOLD YOU THAT THE TEAM AT THERANOS WAS PHENOMENAL,

01:19PM 4 HE HAD NEVER SEEN ANYTHING LIKE THIS IN THE 40 STARTUPS HE HAS

01:19PM 5 WORKED ON; IS THAT RIGHT?

01:19PM 6 A. I DON'T RECALL THAT SPECIFICALLY, BUT I DO KNOW THAT HE

01:19PM 7 SAID THAT THERE WAS A GOOD TEAM OF PEOPLE AT THE COMPANY.

01:19PM 8 Q. OKAY. AND IF YOU COULD TURN TO 14072.

01:19PM 9 A. OKAY.

01:19PM 10 Q. OKAY. IS THIS AN EMAIL BETWEEN YOU AND CHRIS JAMES ON

01:20PM 11 JANUARY 26TH, 2014?

01:20PM 12 A. IT IS, YES.

01:20PM 13 Q. AND THIS EMAIL RELATES TO A THERANOS INVESTMENT; IS THAT

01:20PM 14 RIGHT?

01:20PM 15 A. YES.

01:20PM 16 Q. AND IT ALSO RELATES TO A CALL THAT YOU HAD WITH

01:20PM 17 DR. ROBERTSON; RIGHT?

01:20PM 18 A. THE FIRST CALL, YES.

01:20PM 19 Q. THE FIRST CALL, CORRECT.

01:20PM 20 THE SECOND CALL WAS IN FEBRUARY; RIGHT?

01:20PM 21 A. YES.

01:20PM 22 Q. OKAY.

01:20PM 23 YOUR HONOR, WE OFFER 14072.

01:20PM 24 MR. LEACH: NO OBJECTION, YOUR HONOR.

01:20PM 25 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

01:20PM 1 (DEFENDANT'S EXHIBIT 14072 WAS RECEIVED IN EVIDENCE.)

01:20PM 2 BY MS. WALSH:

01:20PM 3 Q. SO IF WE JUST GO DOWN TO THE BOTTOM OF THAT CHAIN FIRST.

01:20PM 4 MR. JAMES IS REACHING OUT TO YOU, MR. GROSSMAN, SAYING,

01:20PM 5 "WHEN CAN U DO THERANOS INTERNAL PRESENTATION?"

01:20PM 6 DO YOU SEE THAT?

01:20PM 7 A. I DO.

01:20PM 8 Q. "WE NEED TO FIRM UP SIZE IN NEXT COUPLE OF DAYS AT

01:20PM 9 LATEST."

01:20PM 10 AND THEN YOU REPLY IN THE TOP EMAIL AND YOU SAY, "WELL,

01:21PM 11 I'M TAKING OFF TUESDAY AFTERNOON. IDEALLY WE SHOULD TRY TO DO

01:21PM 12 A FIRST PASS ON TUESDAY MORNING. OTHERWISE THURSDAY, I COULD

01:21PM 13 DIAL IN, LEAD THE MEETING FROM NEW YORK AND THE DEAL TEAM WOULD

01:21PM 14 BE IN SAN FRANCISCO IN BIG CONFERENCE ROOM."

01:21PM 15 AND YOU'RE TALKING ABOUT THE PRESENTATION, AREN'T YOU?

01:21PM 16 A. I BELIEVE, YES, HE'S ASKING ME ABOUT AN INTERNAL THERANOS

01:21PM 17 PRESENTATION.

01:21PM 18 SO I THINK THAT PART OF THE EMAIL I'M RESPONDING TO THE

01:21PM 19 INTERNAL THERANOS PRESENTATION.

01:21PM 20 Q. OKAY. AND THAT PRESENTATION WAS TO POTENTIAL INVESTORS IN

01:21PM 21 THERANOS; IS THAT RIGHT?

01:21PM 22 A. I'M NOT SURE. I DON'T REMEMBER THAT PRESENTATION. I

01:21PM 23 DON'T BELIEVE I ACTUALLY WAS PART OF THAT PRESENTATION, SO I'M

01:21PM 24 NOT SURE WHO WAS THERE.

01:21PM 25 BUT I -- I'LL TELL YOU WHAT MY UNDERSTANDING WAS. IT WAS

01:21PM 1 FOR INTERNAL PEOPLE AT THE EVENT, OUR OWN EMPLOYEES THAT WERE
01:22PM 2 INTERESTED IN POTENTIALLY INVESTING.

01:22PM 3 Q. OKAY. AND -- RIGHT. SO THAT PRESENTATION WAS A
01:22PM 4 PRESENTATION ABOUT POTENTIAL INVESTMENT IN THERANOS; RIGHT?

01:22PM 5 A. YEAH. AND AS THE EMAIL SAYS, IT'S AN INTERNAL
01:22PM 6 PRESENTATION.

01:22PM 7 Q. SURE. AND EVEN THOUGH YOU WEREN'T IN SAN FRANCISCO, YOU
01:22PM 8 LED THAT PRESENTATION FROM NEW YORK; IS THAT RIGHT?

01:22PM 9 A. I DON'T BELIEVE THAT I WAS INVOLVED IN THIS PRESENTATION.
01:22PM 10 SO, NO, I DIDN'T LEAD IT FROM NEW YORK.

01:22PM 11 Q. OKAY. YOU DIDN'T PARTICIPATE IN IT AT ALL?

01:22PM 12 A. I DON'T REMEMBER IT SPECIFICALLY. I HAVE NO MEMORY OF
01:22PM 13 THIS PRESENTATION, SO I DON'T KNOW -- I DON'T BELIEVE I WAS
01:22PM 14 INVOLVED IN THIS MEETING.

01:22PM 15 Q. OKAY. BUT YOU WERE LEADING THE EFFORT TO DECIDE WHETHER
01:22PM 16 TO INVEST IN THERANOS; RIGHT?

01:22PM 17 A. I HAVE THE FINAL SAY, LIKE I DO FOR EVERYTHING, IN THE
01:22PM 18 PORTFOLIO.

01:22PM 19 BUT IT WAS A COLLABORATIVE TEAM EFFORT. WE HAD THREE
01:22PM 20 SENIOR PEOPLE WORKING ON IT, ONE JUNIOR PERSON, AND ANY OF THEM
01:22PM 21 WOULD HAVE BEEN QUALIFIED TO DESCRIBE THE INVESTMENT, THE
01:23PM 22 COMPANY TO THEIR COLLEAGUES INTERNALLY.

01:23PM 23 Q. OKAY. SO JUST MOVING DOWN THE EMAIL, IN THE SECOND
01:23PM 24 PARAGRAPH I THE SECOND SENTENCE YOU SAY, "I'M FEELING EVEN
01:23PM 25 BETTER ABOUT THIS NOW. "

01:23PM 1 THAT'S REFERRING TO THE INVESTMENT IN THERANOS; IS THAT

01:23PM 2 RIGHT?

01:23PM 3 A. YES.

01:23PM 4 Q. "I HAD A MIND BLOWING CALL WITH ELIZABETH'S PROFESSOR WHO

01:23PM 5 HELPED HER START THIS."

01:23PM 6 THAT'S A REFERENCE TO DR. ROBERTSON; IS THAT RIGHT?

01:23PM 7 A. YES.

01:23PM 8 Q. AND THAT'S THE JANUARY CALL; CORRECT?

01:23PM 9 A. YES.

01:23PM 10 Q. AND THEN YOU SAY, "WAS THE ORIGINAL BOARD MEMBER."

01:23PM 11 DO YOU SEE THAT?

01:23PM 12 A. I DO.

01:23PM 13 Q. OKAY. LET'S TURN TO 7411.

01:24PM 14 A. OKAY.

01:24PM 15 Q. IS 7411 AN EMAIL FROM DR. RABODZEY TO YOU, AND MR. KHANNA,

01:24PM 16 AND MS. SUMME?

01:24PM 17 DO YOU SEE THAT?

01:24PM 18 A. I DO.

01:24PM 19 Q. OKAY. AND THE DATE OF THE EMAIL IS JANUARY 30TH, 2014;

01:24PM 20 RIGHT?

01:24PM 21 A. YES.

01:24PM 22 Q. AND IT RELATES TO THE FINAL VERSION OF THE THERANOS

01:24PM 23 PRESENTATION; CORRECT?

01:24PM 24 A. THAT'S WHAT IT SAYS, YES.

01:24PM 25 Q. OKAY. AND IT ATTACHES A PDF RELATED TO THERANOS; CORRECT?

01:24PM 1 A. YES.

01:24PM 2 Q. AND THIS IS ONE OF THE PRESENTATIONS THAT WAS MADE IN

01:24PM 3 DECIDING WHETHER TO INVEST IN THERANOS; CORRECT?

01:24PM 4 A. THIS WAS A PRESENTATION THAT WAS FOR I BELIEVE THIS

01:24PM 5 INTERNAL MEETING.

01:24PM 6 Q. OKAY.

01:25PM 7 YOUR HONOR, WE OFFER 7411.

01:25PM 8 MR. LEACH: NO OBJECTION.

01:25PM 9 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:25PM 10 (DEFENDANT'S EXHIBIT 7411 WAS RECEIVED IN EVIDENCE.)

01:25PM 11 BY MS. WALSH:

01:25PM 12 Q. SO IT WAS YOUR -- I THINK YOU JUST SAID THIS, IT WAS YOUR

01:25PM 13 ENTIRE TEAM WHO PUT THIS SLIDE DECK TOGETHER; IS THAT RIGHT?

01:25PM 14 A. IT WAS A COLLABORATIVE EFFORT. I'M NOT SURE WHO ON THE

01:25PM 15 TEAM DID WHAT AS IT RELATES TO THIS PARTICULAR DOCUMENT.

01:25PM 16 Q. OKAY. BUT YOUR TEAM MEMBERS WORKED IN COLLABORATION TO

01:25PM 17 COME UP WITH A WORK PRODUCT; CORRECT?

01:25PM 18 A. YES.

01:25PM 19 Q. AND THIS IS THE RESULT OF THAT WORK; RIGHT?

01:25PM 20 A. YES.

01:25PM 21 Q. OKAY. AND THIS -- YOU BELIEVE THIS WAS PRESENTED

01:25PM 22 INTERNALLY TO EMPLOYEES WHO MAY HAVE WANTED TO INVEST IN

01:25PM 23 THERANOS; IS THAT RIGHT?

01:25PM 24 A. THAT'S MY UNDERSTANDING. I DON'T RECALL SPECIFICALLY.

01:26PM 25 AND AS I SAID BEFORE, I WASN'T PART OF THIS MEETING.

01:26PM 1 Q. OKAY. BUT IS IT FAIR TO SAY THAT IN WHATEVER PRESENTATION
01:26PM 2 WAS GIVEN TO THE PFM EMPLOYEES, YOU WOULD HAVE INCLUDED WHAT
01:26PM 3 YOU VIEWED AS THE RELEVANT INFORMATION TO COMMUNICATE; IS THAT
01:26PM 4 RIGHT?

01:26PM 5 A. WELL, WE CERTAINLY WOULDN'T WANT TO GIVE THEM EVERY PIECE
01:26PM 6 OF INFORMATION THAT WE ACCUMULATED. THAT WOULDN'T -- THAT
01:26PM 7 WOULD HAVE TAKEN WAY TOO LONG.

01:26PM 8 SO I THINK WE, WE -- THE EFFORT IS REALLY AROUND GIVING
01:26PM 9 THEM A VIEW OF THE COMPANY AND THE BUSINESS WITHOUT GIVING THEM
01:26PM 10 TOO MUCH DETAIL.

01:26PM 11 Q. OKAY. BUT YOU WOULD INCLUDE THE RELEVANT THINGS THAT YOU
01:26PM 12 FELT WERE IMPORTANT; RIGHT?

01:26PM 13 A. I MEAN, THAT'S A SUBJECTIVE PERSPECTIVE. I MEAN,
01:26PM 14 DIFFERENT PEOPLE MAY THINK DIFFERENT THINGS ARE RELEVANT, BUT,
01:26PM 15 YEAH, WE WOULD CERTAINLY WANT PEOPLE TO WALK AWAY AND
01:26PM 16 UNDERSTAND THE COMPANY.

01:26PM 17 Q. OKAY. SO LET'S TAKE A LOOK AT SLIDE 3, WHICH IS MARKET
01:27PM 18 OVERVIEW.

01:27PM 19 GREAT. AND THIS WAS THE SLIDE THAT WE JUST LOOKED AT IN
01:27PM 20 YOUR MODEL, RIGHT, AND YOU SAID THIS WAS A PART OF THE
01:27PM 21 PRESENTATION; CORRECT?

01:27PM 22 A. YES.

01:27PM 23 Q. OKAY. AND THIS WAS JUST INFORMATION ABOUT THE U.S. LAB
01:27PM 24 MARKET, DIFFERENT SEGMENTS WITHIN THAT MARKET TO GIVE SOME
01:27PM 25 CONTEXT TO THE INVESTMENT; CORRECT?

01:27PM 1 A. YES.

01:27PM 2 Q. OKAY. AND THEN IF WE CAN GO TO SLIDE 4. THAT'S LABELLED

01:27PM 3 BUSINESS OVERVIEW.

01:27PM 4 LET'S GO DOWN TO THE THIRD BULLET.

01:27PM 5 YOU SAY IN THE THIRD BULLET, "MODEST NUMBER OF CURRENT

01:27PM 6 TESTS REQUIRE VENOUS BLOOD DRAW, WHICH WILL BE TRANSITIONED TO

01:28PM 7 FINGERSTICK IN THE NEXT FEW MONTHS."

01:28PM 8 DO YOU SEE THAT?

01:28PM 9 A. I DO.

01:28PM 10 Q. AND THE NEXT BULLET SAYS, "ANNOUNCE ROLLOUT OF PLATFORM IN

01:28PM 11 8,000 PLUS WALGREENS STORES NATIONWIDE."

01:28PM 12 DO YOU SEE THAT?

01:28PM 13 A. IT'S NOT ON THIS SCREEN. THERE WE GO.

01:28PM 14 Q. YES.

01:28PM 15 A. YES.

01:28PM 16 Q. AND THEN GOING DOWN TO THE LAST BULLET, "FASTER AND MORE

01:28PM 17 CONVENIENT LAB TESTING EXPERIENCE FOR CONSUMER -- WALGREENS

01:28PM 18 OPEN 24/7," ET CETERA.

01:28PM 19 DO YOU SEE THAT?

01:28PM 20 A. I DO.

01:28PM 21 Q. NOW IF WE CAN GO TO SLIDE 5.

01:28PM 22 SLIDE 5 IS LABELLED BUSINESS OUTLOOK. AND THERE'S AN

01:28PM 23 UPSIDE SCENARIO AND A DOWNSIDE SCENARIO.

01:28PM 24 DO YOU SEE THAT?

01:28PM 25 A. I DO.

01:28PM 1 Q. OKAY. AND WE'RE GOING TO GO THROUGH SOME OF THE DOWNSIDE
01:29PM 2 SCENARIO.
01:29PM 3 SO THE FIRST BULLET SAYS, "HUB AND SPOKE MODEL LIMITS
01:29PM 4 THERANOS TO SELECTED MAJOR CITIES."
01:29PM 5 IS THAT RIGHT?
01:29PM 6 A. YES.
01:29PM 7 Q. OKAY. THE NEXT IS, "LOBBYING EFFORTS FROM QUEST AND
01:29PM 8 LABCORP DELAY CUTS IN MEDICARE REIMBURSEMENT."
01:29PM 9 DO YOU SEE THAT?
01:29PM 10 A. I DO SEE THAT.
01:29PM 11 Q. AND THE NEXT ONE, "RETAIL STORES REQUIRE STAFFING OF
01:29PM 12 PHLEBOTOMISTS REDUCING PROFITABILITY IN RETAIL SEGMENT."
01:29PM 13 DO YOU SEE THAT?
01:29PM 14 A. I DO SEE THAT.
01:29PM 15 Q. AND THEN SKIPPING DOWN TO THE SECOND TO THE LAST BULLET,
01:29PM 16 "EXECUTION OF THE ROLLOUT TAKES LONGER BECAUSE OF TEST
01:29PM 17 VALIDATION."
01:29PM 18 DO YOU SEE THAT?
01:29PM 19 A. I DO.
01:29PM 20 Q. "GEOGRAPHIC CONSTRAINTS, PAYER CONTRACTING AND OTHER
01:29PM 21 UNFORESEEN CIRCUMSTANCES."
01:29PM 22 THE NEXT BULLET SAYS, "CUSTOMER EXPERIENCE IS NOT AS GOOD
01:29PM 23 AS EXPECTED AND DISTRIBUTION PARTNERS SCALE BACK THEIR
01:29PM 24 ROLLOUT."
01:29PM 25 DO YOU SEE THAT?

01:30PM 1 A. I DO.

01:30PM 2 Q. AND SO THOSE WERE ALL POTENTIAL DOWNSIDES; RIGHT?

01:30PM 3 A. YES.

01:30PM 4 Q. AND ON THE UPSIDE SCENARIO, IF WE LOOK AT THE SECOND

01:30PM 5 BULLET IT SAYS, "REGULATORY APPROVAL REQUIRED TO PLACE THERANOS

01:30PM 6 UNITS WITHIN RETAIL STORES VERSUS HUB AND SPOKE MODEL."

01:30PM 7 DO YOU SEE THAT?

01:30PM 8 A. I DO.

01:30PM 9 Q. AND SO THAT WOULD BE A GOOD THING, RIGHT, IF THERANOS GOT

01:30PM 10 APPROVAL TO PUT ITS DEVICE RUNNING TESTS INTO WALGREENS; RIGHT?

01:30PM 11 A. YES. THIS KIND OF REFERENCES OUR BULL CASE, WHICH WE

01:30PM 12 TRIED TO KIND OF BUILD OUR BASE CASE AND DOWNSIDE CASE AROUND

01:30PM 13 THE HUB AND SPOKE MODEL, WHICH TOOK THAT REGULATORY RISK OFF

01:30PM 14 THE TABLE.

01:30PM 15 BUT IF THEY WERE ABLE TO GET APPROVAL TO PUT THEM IN THE

01:30PM 16 THERANOS STORES, WE JUST WANTED PEOPLE TO KNOW THAT THAT WOULD

01:30PM 17 BE AN UPSIDE SCENARIO VERSUS WHAT WE'RE MODELING AS OUR BASE

01:31PM 18 CASE.

01:31PM 19 SO THAT'S WHY WE INCLUDED THAT BULLET POINT THERE.

01:31PM 20 Q. OKAY. AND IN THIS PRESENTATION, THERE'S NO MENTION OF ANY

01:31PM 21 DEPARTMENT OF DEFENSE BUSINESS; CORRECT?

01:31PM 22 A. THAT'S CORRECT.

01:31PM 23 Q. AND THERE'S NO MENTION THAT THERANOS HAD \$220 MILLION IN

01:31PM 24 REVENUE SINCE ITS INCEPTION; RIGHT?

01:31PM 25 A. YEAH. LIKE I SAID, WE'RE NOT GOING TO PUT EVERY SINGLE

01:31PM 1 DATA POINT FROM ALL OF OUR MEETINGS INTO THIS DOCUMENT.

01:31PM 2 SO THERE ARE OTHER THINGS THAT WOULD NOT BE IN HERE, TOO.

01:31PM 3 Q. OKAY. ABOUT \$220 MILLION IN REVENUE SINCE INCEPTION IS

01:31PM 4 DEFINITELY NOT IN THIS PRESENTATION; RIGHT?

01:31PM 5 A. I MEAN, I HAVE NOT BEEN THROUGH THE WHOLE PRESENTATION,

01:31PM 6 BUT I DON'T BELIEVE IT'S ON THIS PAGE.

01:31PM 7 Q. OKAY. DO YOU WANT TO TAKE A LOOK AT IT TO MAKE SURE.

01:31PM 8 A. NO. THAT'S OKAY. WE CAN KEEP GOING.

01:31PM 9 Q. OKAY. AND THERE'S NOTHING -- YOU TESTIFIED ON WEDNESDAY

01:31PM 10 THAT MS. HOLMES AND MR. BALWANI TOLD YOU THAT THE DEVICE HAD

01:32PM 11 FLOWN ON MEDEVACS IN AFGHANISTAN AND HAD SAVED SOLDIERS' LIVES.

01:32PM 12 DO YOU REMEMBER THAT TESTIMONY?

01:32PM 13 A. I DO.

01:32PM 14 Q. AND THERE'S NOTHING ABOUT THAT IN THIS PRESENTATION, IS

01:32PM 15 THERE?

01:32PM 16 A. NO.

01:32PM 17 Q. OKAY.

01:32PM 18 MAY I HAVE A MOMENT, YOUR HONOR?

01:32PM 19 THE COURT: FOLKS, IF YOU WANT TO STAND UP FOR A

01:32PM 20 MINUTE, FEEL FREE.

01:32PM 21 YOU MAY AS WELL.

01:32PM 22 THE WITNESS: THANK YOU.

01:33PM 23 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

01:33PM 24 (STRETCHING.)

01:33PM 25 MS. WALSH: I HAVE NO FURTHER QUESTIONS AT THIS

01:33PM 1 TIME.

01:33PM 2 THE COURT: THANK YOU.

01:33PM 3 REDIRECT?

01:33PM 4 MR. LEACH: THANK YOU, YOUR HONOR.

01:33PM 5 **REDIRECT EXAMINATION**

01:33PM 6 BY MR. LEACH:

01:34PM 7 Q. GOOD AFTERNOON, MR. GROSSMAN.

01:34PM 8 A. GOOD AFTERNOON.

01:34PM 9 Q. I HAVE A FEW QUESTIONS RELATING TO SOME OF THE QUESTIONS
01:34PM 10 THAT MS. WALSH ASKED YOU ON CROSS-EXAMINATION.

01:34PM 11 AND I'D LIKE TO START WHERE MS. WALSH ENDED.

01:34PM 12 DO YOU RECALL BEING ASKED QUESTIONS ABOUT MS. HOLMES AND
01:34PM 13 MR. BALWANI'S STATEMENTS ABOUT THE THERANOS DEVICE BEING ON
01:34PM 14 MEDEVAC HELICOPTERS.

01:35PM 15 DO YOU RECALL THOSE QUESTIONS?

01:35PM 16 A. I DO.

01:35PM 17 Q. AND WHAT, AGAIN, DID MS. HOLMES AND MR. BALWANI TELL YOU
01:35PM 18 IN THAT DECEMBER 2013 MEETING ABOUT MEDEVACS?

01:35PM 19 MS. WALSH: OBJECTION. ASKED AND ANSWERED.

01:35PM 20 THE COURT: OVERRULED.

01:35PM 21 THE WITNESS: THEY, THEY -- IT WAS AT THE BEGINNING
01:35PM 22 OF THE MEETING, AFTER THEY HAD TOLD US THAT THEY HAD BEEN IN
01:35PM 23 STEALTH MODE FOR OVER TEN YEARS.

01:35PM 24 AND DURING THAT TEN YEAR PERIOD OF TIME, THEY HAD BEEN
01:35PM 25 WORKING WITH THE DEPARTMENT OF DEFENSE AND THEIR TECHNOLOGY HAD

01:35PM 1 BEEN DEPLOYED ON MEDEVACS, AND THEY WENT THROUGH THIS EXAMPLE
01:35PM 2 ABOUT HOW GIVING DIAGNOSTIC INFORMATION TO THE EMERGENCY ROOM
01:35PM 3 IN THE MILITARY SETTING WITHIN A SHORT -- WITHIN AN HOUR SAVED
01:35PM 4 LIVES, AND THEIR TECHNOLOGY HAD BEEN DOING THAT IN THE
01:35PM 5 BATTLEFIELD.

01:35PM 6 THEY ALSO, SUBSEQUENT TO THAT, TOLD US IT WAS ALSO USED TO
01:35PM 7 IDENTIFY, AGAIN, IN THE BATTLEFIELD, SOLDIERS THAT GOT SICK,
01:35PM 8 THEY COULD QUICKLY, WITH THIS TECHNOLOGY, IDENTIFY THE VIRUS OR
01:35PM 9 THE BACTERIA, AND THAT ALSO WAS ABLE TO SAVE LIVES.

01:36PM 10 Q. AND SUBSEQUENT TO THAT DECEMBER 2013 MEETING, DID
01:36PM 11 MR. BALWANI ALSO SAY THAT THE DEVICE HAD BEEN IN AFGHANISTAN?

01:36PM 12 A. YES. WE WERE ASKING HIM ABOUT HOW RELIABLE THIS EQUIPMENT
01:36PM 13 WAS IN THE REAL WORLD, HOW WILL IT HOLD UP IF YOU HAVE TO RUN
01:36PM 14 YOUR MINILABS 24/7 TO SUPPORT THESE DIFFERENT RETAIL
01:36PM 15 GEOGRAPHIES, AND HE EXPLAINED HOW EACH DEVICE HAD A HEARTBEAT,
01:36PM 16 THEY COULD MONITOR THE DEVICE REMOTELY, AND THE WORK AND THE
01:36PM 17 TIME THAT THEY HAD SPENT WITH THE MILITARY USING THIS
01:36PM 18 TECHNOLOGY HAD GIVEN THEM IMPORTANT INSIGHTS FOR HOW A REAL
01:36PM 19 WORLD APPLICATION WOULD WORK.

01:36PM 20 THE ENVIRONMENT IN THE MILITARY BEING CHALLENGING,
01:36PM 21 DIFFICULT, YOU KNOW, THE PLACES WHERE THIS WAS USED, THE
01:36PM 22 WEATHER, THE HUMIDITY, YOU KNOW, THE, THE -- JUST A LOT OF
01:36PM 23 DUST, THOSE TYPES OF THINGS REALLY HELPED THEM CREATE A VERY
01:37PM 24 ROBUST REAL WORLD 24/7 WORK FORCE ANALYZER.

01:37PM 25 Q. AND THE STATEMENTS ABOUT MEDEVACS, AFGHANISTAN, USED BY

01:37PM 1 THE MILITARY, WERE THEY RELEVANT TO YOU?

01:37PM 2 A. THEY WERE VERY RELEVANT. I MEAN, AS I SAID THE OTHER DAY,
01:37PM 3 YOU KNOW WHAT -- ANYTHING THAT THE MILITARY WOULD USE ON A
01:37PM 4 SOLDIER HAS TO GO THROUGH A RIGOROUS VETTING PROCESS AND MEET
01:37PM 5 THE HIGHEST STANDARDS.

01:37PM 6 AND SO -- NOT TO MENTION HOW DIFFICULT CONDITIONS CAN BE
01:37PM 7 IN THE PARTS OF THE WORLD WHERE OUR MILITARY AT THAT POINT IN
01:37PM 8 TIME HAD BEEN DEPLOYED, YOU KNOW, THE MIDDLE EAST, AFGHANISTAN,
01:37PM 9 THOSE TYPES OF PLACES. IT COULD BE REALLY HARSH ENVIRONMENTS
01:37PM 10 TO OPERATE A DEVICE LIKE THIS.

01:37PM 11 SO FOR ALL OF THOSE REASONS, WE WERE IMPRESSED AND IT
01:37PM 12 REALLY SPOKE TO HOW MUCH THIS COMPANY HAD ACCOMPLISHED OVER
01:38PM 13 THAT TEN YEAR STEALTH PERIOD.

01:38PM 14 Q. MS. WALSH SHOWED YOU A POWERPOINT PRESENTATION THAT YOU
01:38PM 15 DID NOT PREPARE FOR A MEETING THAT YOU DID NOT ATTEND. IT
01:38PM 16 DOESN'T MAKE REFERENCE TO MEDEVACS.

01:38PM 17 DOES THAT MEAN THAT THAT INFORMATION IS NOT RELEVANT TO
01:38PM 18 YOU?

01:38PM 19 A. NO. WE WERE INVESTING, WE WERE INVESTING IN THE RETAIL
01:38PM 20 HOSPITAL PHYSICIAN ROLLOUT.

01:38PM 21 AS IMPRESSIVE AS THE MEDEVAC EXAMPLE WAS, I'M NOT SURE
01:38PM 22 THAT THAT WOULD BE A GREAT BUSINESS. I'M NOT SURE WHAT THE
01:38PM 23 MARKET OPPORTUNITY FOR THIS TECHNOLOGY IN A MILITARY SETTING
01:38PM 24 WOULD BE.

01:38PM 25 IT PROBABLY WOULDN'T BE THE TYPE OF THING THAT WE WOULD

01:38PM 1 GET REALLY EXCITED ABOUT.

01:38PM 2 SO OUR FOCUS FROM AN INVESTMENT PERSPECTIVE IS HOW THIS
01:38PM 3 TECHNOLOGY WAS GOING TO BE ROLLED OUT, USED IN A REAL WORLD
01:38PM 4 SETTING BOTH THE RETAIL SIDE, AND ACTUALLY JUST AS IMPORTANTLY,
01:38PM 5 THE HOSPITAL AND THE PHYSICIAN OFFICE PIECE OF IT WAS ALSO
01:38PM 6 EQUALLY IMPORTANT AS WAS THE INTERNATIONAL OPPORTUNITY THAT WE
01:39PM 7 DID NOT INCLUDE IN OUR BASE CASE -- ACTUALLY IN ANY OF OUR
01:39PM 8 ANALYSES.

01:39PM 9 Q. DID THE STATEMENTS ABOUT THE MILITARY LEND CREDIBILITY TO
01:39PM 10 THE REVENUE PROJECTIONS THAT THERANOS WAS PROVIDING YOU?

01:39PM 11 A. YES.

01:39PM 12 Q. HOW SO?

01:39PM 13 A. IT JUST -- YOU KNOW, I MEAN, IT KIND OF GOES TO JUST THE
01:39PM 14 SEAL OF APPROVAL THAT THE TECHNOLOGY VALIDATION THAT YOU HAVE
01:39PM 15 AS AN INVESTOR OR ANYONE WHO HEARS THOSE TYPES OF
01:39PM 16 REPRESENTATIONS, YOU KNOW, YOU CANNOT NOT IMPRESSED WITH WHAT
01:39PM 17 THAT TECHNOLOGY IS CAPABLE OF, HOW IT'S BEEN USED, AND
01:39PM 18 OBVIOUSLY, YOU KNOW, CONSISTENT WITH WALGREENS WANTING TO USE
01:39PM 19 THIS IN THEIR RETAIL SETTINGS, CONSISTENT WITH REALLY WELL
01:39PM 20 RESPECTED HOSPITAL ORGANIZATIONS LIKE INTERMOUNTAIN HEALTH,
01:39PM 21 DIGNITY HEALTH WAS ANOTHER PARTNER THAT THEY HAD IN CALIFORNIA,
01:39PM 22 THEY RUN ONE OF THE LARGEST NETWORKS OF HOSPITALS IN THE ENTIRE
01:40PM 23 COUNTRY, AND THEN OBVIOUSLY SAFEWAY.

01:40PM 24 YOU KNOW, THEY ALL HAD A SIMILAR PERSPECTIVE ON WHAT THIS
01:40PM 25 TECHNOLOGY WAS CAPABLE OF DOING.

01:40PM 1 Q. WHILE WE'RE ON THE SUBJECT OF THE MODEL, THE MODEL THAT
01:40PM 2 PFM DEVELOPED THAT MS. WALSH SHOWED YOU IN EXHIBIT 13702A, AND
01:40PM 3 WE LOOKED AT SOME BLUE TABS AND SOME ORANGE TABS. THE BLUE
01:40PM 4 TABS RELATED TO THERANOS?

01:40PM 5 A. I BELIEVE THE BLUE TABS WERE THE THERANOS TABS, YES.

01:40PM 6 Q. AND THAT WAS INFORMATION PROVIDED BY THERANOS?

01:40PM 7 A. YES.

01:40PM 8 Q. AND IS THAT WHERE YOU START WHEN PUTTING TOGETHER YOUR OWN
01:40PM 9 MODEL?

01:40PM 10 A. YEAH, WE, WE USED -- WE RELIED HEAVILY ON THEIR 2014 AND
01:40PM 11 '15 MONTHLY PROJECTIONS, VERY DETAILED ROLLOUTS FOR BOTH --
01:41PM 12 WELL, REALLY ALL OF THE BUSINESSES, INCLUDING WALGREENS,
01:41PM 13 SAFEWAY, THE HOSPITAL BUSINESS, THE PHYSICIAN OFFICE BUSINESS,
01:41PM 14 AND EVEN THE PHARMACEUTICAL SERVICES BUSINESS, THE CLINICAL
01:41PM 15 TRIALS BUSINESS, ALL OF THAT WE HAD DETAILED FORECASTS.

01:41PM 16 SO WE USED -- WE RELIED HEAVILY ON THOSE ESTIMATES FOR '14
01:41PM 17 AND '15.

01:41PM 18 BEYOND THAT, WE HAD TO COME UP WITH OUR OWN METHODOLOGY,
01:41PM 19 OUR OWN WAY OF FORECASTING REVENUES, SO AT THAT POINT WE KIND
01:41PM 20 OF TRANSFERRED TO A DIFFERENT WAY OF MODELING THE COMPANY.

01:41PM 21 BUT WE DID TAKE THEIR ESTIMATES, AND WE USED THOSE.

01:41PM 22 BUT WE ALSO HAD LOWER NUMBERS THAN THE COMPANY.

01:41PM 23 SO OUR, OUR BASE CASE 2014 AND 2015 WAS BELOW THE COMPANY
01:41PM 24 MODEL THAT THEY SENT US.

01:41PM 25 THE BEAR CASE WAS EVEN MORE BELOW.

01:41PM 1

SO IT FACTORED HEAVILY INTO OUR ANALYTIC MODELING

01:41PM 2

EXERCISE. AND THEN BEYOND 2015, WE HAD TO MAKE OUR OWN

01:41PM 3

ASSUMPTIONS.

01:41PM 4

Q. AND DID YOU ASSUME THE GOOD FAITH OF THE PROJECTIONS THAT

01:42PM 5

MR. BALWANI WAS GIVING YOU?

01:42PM 6

A. YES, ESPECIALLY SINCE THE SECOND MEETING THE DESCRIPTION

01:42PM 7

OF HOW WELL THE PARTNERSHIP WAS GOING, RAISED OUR NUMBERS

01:42PM 8

TWICE, I THINK WE FELT LIKE THEY HAD EXCELLENT VISIBILITY INTO

01:42PM 9

THE INITIAL ROLLOUT OF THIS TECHNOLOGY, BOTH WITH WALGREENS AND

01:42PM 10

SAFEWAY AND THE OTHER IMPORTANT REVENUE LINES AS WELL.

01:42PM 11

Q. OKAY. YOU ALSO MENTIONED INTERMOUNTAIN AND DIGNITY.

01:42PM 12

THOSE ARE HOSPITAL CHAINS?

01:42PM 13

A. YES.

01:42PM 14

Q. WOULD IT SURPRISE YOU THAT THERANOS HAD NO REVENUE FROM

01:42PM 15

HOSPITAL CHAINS IN 2014 AND 2015?

01:42PM 16

A. THAT WOULD BE --

01:42PM 17

MS. WALSH: OBJECTION.

01:42PM 18

THE COURT: OVERRULED.

01:42PM 19

THE WITNESS: THAT WOULD BE SHOCKING.

01:42PM 20

BY MR. LEACH:

01:42PM 21

Q. MS. WALSH ALSO WALKED YOU THROUGH PORTIONS OF THE MODEL

01:42PM 22

RELATING TO THE DEVICE COSTS AND SOME OF THE ASSUMPTIONS WITHIN

01:42PM 23

THE THERANOS MODEL.

01:42PM 24

DO YOU RECALL THAT?

01:42PM 25

A. YEAH. PER MY LAST ANSWER, NOT ONLY WOULD IT BE SHOCKING,

01:43PM 1 IT WOULD DIRECTLY CONTRADICT STATEMENTS THAT THE COMPANY HAD
01:43PM 2 MADE TO US OVER MULTIPLE MEETINGS IF THERE WAS ZERO REVENUES IN
01:43PM 3 THE HOSPITAL BUSINESS IS THE QUESTION. THAT'S WHY I SAID
01:43PM 4 SHOCKING. SORRY.

01:43PM 5 Q. THANK YOU FOR THAT, MR. GROSSMAN.

01:43PM 6 GOING BACK TO THE MODEL, YOU WERE SHOWN SOME OF THE MARKET
01:43PM 7 ASSUMPTIONS AND SOME COSTS RELATING TO THE THERANOS DEVICE.

01:43PM 8 DO YOU RECALL THAT?

01:43PM 9 A. MAYBE YOU COULD BE A LITTLE MORE SPECIFIC.

01:43PM 10 Q. YOU WERE SHOWN IN THE BLUE SPREADSHEETS SOME TABS WITH,
01:43PM 11 YOU KNOW, ASSUMPTIONS ABOUT THE NUMBER OF RETAIL PHARMACIES?

01:43PM 12 A. OH, YES.

01:43PM 13 Q. AT ANY POINT IN TIME IN THE THERANOS MODEL, DID YOU SEE A
01:43PM 14 REFERENCE TO SIEMENS MACHINES?

01:43PM 15 A. NO.

01:43PM 16 Q. DID YOU SEE ANYTHING SUGGESTING TO YOU THAT THERANOS WOULD
01:43PM 17 NEED TO BUY THIRD PARTY ANALYZERS TO DO ITS BLOOD TESTING
01:44PM 18 BUSINESS?

01:44PM 19 A. NO. AND AS I THINK I MENTIONED ON WEDNESDAY, I MEAN, IT
01:44PM 20 WOULDN'T HAVE MADE ANY ECONOMIC SENSE. THEY WOULD HAVE HAD TO
01:44PM 21 BUY THOSE MACHINES AT A HIGHER PRICE THAN LABCORP AND QUEST.
01:44PM 22 THEY'RE CHARGING HALF THE PRICE OF MEDICARE. I MEAN, IT
01:44PM 23 DOESN'T MAKE ANY ECONOMIC SENSE WHY YOU WOULD DO THAT.

01:44PM 24 SO, NO, THAT -- THERE WAS NO REFERENCE OR MENTION OF ANY
01:44PM 25 OF THAT IN THE MODEL OR ANY OF THE MEETINGS.

01:44PM 1 Q. AND I'M GATHERING FROM YOUR STATEMENTS THAT SUCH
01:44PM 2 INFORMATION WOULD HAVE BEEN RELEVANT TO YOU?

01:44PM 3 A. YES.

01:44PM 4 Q. MS. WALSH ALSO SHOWED YOU EXHIBIT 4089. AND IF WE CAN
01:44PM 5 CALL THAT UP, PLEASE.

01:44PM 6 DO YOU RECALL QUESTIONS ABOUT THIS EMAIL FROM DR. RABODZEY
01:44PM 7 ABOUT FDA APPROVAL?

01:45PM 8 A. I DO.

01:45PM 9 Q. OKAY. AND IF WE COULD ZOOM IN ON THE BOTTOM PORTION UNDER
01:45PM 10 "LET ME DIGEST THIS IN A SIMPLE WAY."

01:45PM 11 DO YOU SEE BULLET 3 WHERE IT SAYS, "LH AND DGX ARE USING
01:45PM 12 MINI (I AM NOT SURE IF ALL) FDA APPROVED TESTS AND THEY ARE
01:45PM 13 USING FDA APPROVED MACHINES, WHILE THERANOS IS NOT."

01:45PM 14 DO YOU SEE THAT LANGUAGE?

01:45PM 15 A. YES.

01:45PM 16 Q. AND WAS THAT CONSISTENT WITH YOUR UNDERSTANDING OF
01:45PM 17 THERANOS'S BUSINESS AT THE TIME?

01:45PM 18 A. THAT WAS CONSISTENT WITH OUR UNDERSTANDING THAT THEY WOULD
01:45PM 19 HAVE THEIR OWN PROPRIETARY MINILABS IN THEIR CLIA LABORATORIES
01:45PM 20 PROCESSING HUMAN SAMPLES FROM THOSE WALGREENS STORES IN
01:45PM 21 ADDITION TO THE PHYSICIAN OFFICE, IN ADDITION TO THE SAMPLES
01:45PM 22 THEY COLLECTED FROM PHYSICIAN OFFICES.

01:45PM 23 Q. AND THAT UNDERSTANDING WAS BASED ON YOUR PHONE CALLS WITH
01:45PM 24 MR. BALWANI, YOUR MEETINGS WITH MR. BALWANI AND THE WRITTEN
01:46PM 25 MATERIALS THAT HE PROVIDED?

01:46PM 1 A. YES.

01:46PM 2 Q. AND I THINK YOU SAID THAT THERANOS TOLD YOU THAT THEY

01:46PM 3 DIDN'T BELIEVE THAT FDA APPROVAL WAS REQUIRED BUT THEY INTENDED

01:46PM 4 TO PURSUE THAT?

01:46PM 5 A. YES, THAT CAME UP IN, IN OUR SECOND MEETING, AND IT WAS A

01:46PM 6 FREQUENT TOPIC IN CONVERSATIONS WITH THE COMPANY.

01:46PM 7 THEY EXPLAINED THAT AS A LAB SERVICE PROVIDER, NOT A

01:46PM 8 MEDICAL OR DIAGNOSTIC EQUIPMENT MANUFACTURER, AS A LAB SERVICE

01:46PM 9 PROVIDER, THEY HAD TO MEET THE CLIA STANDARDS, WHICH ACTUALLY

01:46PM 10 THEY EXPLAINED TO US FROM THEIR PERSPECTIVE, THAT WAS A HIGHER

01:46PM 11 STANDARD, AND THEY HAD TO, THEY HAD TO MEASURE SOMETHING

01:46PM 12 ACCURATELY. THEY REFERRED TO IT AS THE TRUTH.

01:46PM 13 AND SO AS LONG AS THEY OPERATED IN THE CLIA LAB

01:46PM 14 ENVIRONMENT, THEY WERE FREE TO USE THEIR PROPRIETARY TECHNOLOGY

01:46PM 15 AND CONTINUE TO PROVIDE THAT RETAIL PRODUCT.

01:46PM 16 THE FDA APPROVAL PROCESS WAS SOMETHING THAT THEY OFFERED

01:47PM 17 AS A STRATEGY THAT THEY WERE GOING TO PURSUE, WHICH WOULD PUT

01:47PM 18 THEIR TECHNOLOGY ON AN EVEN HIGHER PLANE, AND WOULD SORT OF

01:47PM 19 ELEVATE IT RELATIVE TO WHAT THE REST OF THE LABORATORY INDUSTRY

01:47PM 20 IS DOING, WHICH IS OPERATING IT UNDER THE CLIA LAWS IN THESE

01:47PM 21 CLIA REGULATORY ENVIRONMENTS.

01:47PM 22 AND SO -- AND, YOU KNOW, THEN THAT'S THE, THAT'S THE

01:47PM 23 STATEMENT THAT MR. BALWANI MADE ABOUT NOBODY, NOBODY FILES

01:47PM 24 THOUSANDS OF ASSAYS WITH THE FDA.

01:47PM 25 THEY HAD SUBMITTED IN NOVEMBER, AND THEN WE HAD MULTIPLE

01:47PM 1 FOLLOWUPS OVER THIS AND TRYING TO UNDERSTAND THE FDA STRATEGY.

01:47PM 2 IT WAS IMPORTANT IN THE SENSE THAT, YOU KNOW, IT WAS GOOD
01:47PM 3 MARKETING, AND I THINK THAT'S THE PART THAT WE REALLY WANTED TO
01:47PM 4 UNDERSTAND, ESPECIALLY SINCE WE WERE INVESTING OVER A COUPLE
01:47PM 5 YEAR PERIOD, AND WE REALLY WANTED THAT FDA APPROVAL TO KIND OF
01:47PM 6 HELP GET SOME GOOD PUBLICITY FOR THE PLATFORM.

01:47PM 7 BUT IN TERMS OF THE BUSINESS AND THE WAY WE MODELLED IT,
01:48PM 8 THE WAY WE OPERATED AND THE LAB OPERATIONS, THEY WERE PRETTY
01:48PM 9 CLEAR THEY DIDN'T NEED FDA APPROVAL TO PROVIDE LABORATORY
01:48PM 10 SERVICES.

01:48PM 11 AND THEY EVEN FELT IN PHASE II, WHERE THEY WERE GOING TO
01:48PM 12 PUT THE MACHINES IN THE WALGREENS STORES, THEY FELT THAT THEY
01:48PM 13 HAD A STRATEGY THAT WOULD HAVE AVOIDED THE NEED FOR FDA
01:48PM 14 APPROVAL IN PHASE II.

01:48PM 15 NOW, WE WENT AND DID OUR OWN ANALYSIS ON THAT, AND WE FELT
01:48PM 16 THAT PARTICULAR PIECE WAS A LITTLE RISKIER. SO WE REFLECTED
01:48PM 17 THAT IN HOW WE MODELLED THE COMPANY, AND THAT'S WHY WE CHOSE
01:48PM 18 THE HUB AND SPOKE MODEL.

01:48PM 19 AND EVEN THOUGH THE COMPANY HAS A VERY COMPETENT
01:48PM 20 PERSPECTIVE ON THE REGULATION, THE ABILITY TO USE THE MACHINES,
01:48PM 21 AND EVEN THOUGH THE COMPANY HAS A VERY STRONG OPTIMISTIC VIEW
01:48PM 22 OF THE REGULATORY RISK AROUND USING MINILABS IN WALGREENS,
01:48PM 23 WE'RE GOING TO TAKE A LITTLE BIT MORE OF A CONSERVATIVE VIEW OF
01:48PM 24 THAT, WHICH IS WHY WE MODELLED THE COMPANY ON OUR BASE CASE AND
01:49PM 25 OUR DOWNSIDE CASE USING THE HUB AND SPOKE MODEL, WHERE THEY

01:49PM 1 DIDN'T NEED FDA APPROVAL PUTTING THE DEVICES IN THE WALGREENS
01:49PM 2 IN ORDER TO GENERATE THOSE TYPES OF REVENUES.

01:49PM 3 IT WOULD BE A -- JUST A CLASSIC KIND OF REFERENCE
01:49PM 4 LABORATORY MODEL.

01:49PM 5 Q. MS. WALSH ALSO ASKED YOU SOME QUESTIONS ABOUT
01:49PM 6 EXHIBIT 7391.

01:49PM 7 IF WE CAN PLEASE CALL THAT UP, MS. WACHS?

01:49PM 8 AND IF WE CAN GO TO THE NEXT PAGE, PLEASE. I WANT TO
01:49PM 9 START FROM THE EMAIL FROM DR. RABODZEY ON JANUARY 10TH, 2014.

01:49PM 10 DO YOU SEE THAT?

01:49PM 11 A. I DO.

01:49PM 12 Q. AND THIS IS AFTER YOUR SECOND MEETING WITH MR. BALWANI IN
01:49PM 13 PALO ALTO IN EARLY JANUARY?

01:49PM 14 A. YES.

01:49PM 15 Q. OKAY. AND MR. RABODZEY SAYS, "EVERYTHING I'VE HEARD ABOUT
01:49PM 16 THE TECHNOLOGY SOUNDS VERY GOOD, BUT IT IS WORTH BOUNCING THIS
01:50PM 17 OFF LH AND DGX," AND SOME OTHER ACRONYMS, "OBVIOUSLY WITHOUT
01:50PM 18 DISCLOSING ANYTHING WE SHOULD BE DISCLOSING."

01:50PM 19 WAS THIS A NORMAL PART OF YOUR PROCESS, TO SPEAK TO OTHERS
01:50PM 20 WITHIN THE INDUSTRY ABOUT WHAT THEY'VE HEARD ABOUT ANOTHER
01:50PM 21 COMPANY?

01:50PM 22 A. YES.

01:50PM 23 Q. AND IS THIS PART OF YOUR PROCESS IN EVALUATING
01:50PM 24 INVESTMENTS?

01:50PM 25 A. YES.

01:50PM 1 Q. DID YOU DISCLOSE ANY CONFIDENTIAL INFORMATION FROM
01:50PM 2 THERANOS TO ANY OUTSIDERS?

01:50PM 3 A. NOT TO MY KNOWLEDGE, NO.

01:50PM 4 Q. AND WHEN YOU'RE GATHERING INFORMATION ABOUT A POTENTIAL
01:50PM 5 INVESTMENT, CAN YOU WEIGHT WHETHER YOU RELY MORE ON WHAT YOU'RE
01:50PM 6 HEARING FROM OUTSIDERS VERSUS WHAT YOU'RE HEARING FROM THE
01:50PM 7 COMPANY ITSELF?

01:50PM 8 A. SO MAYBE TWO PERSPECTIVES ON THAT.

01:50PM 9 ONE IS, HEARING WHAT OTHER COMPANIES HAVE TO SAY THAT IS
01:50PM 10 NOT POSITIVE CAN BE HELPFUL TO ASKING QUESTIONS AND TO HELP YOU
01:51PM 11 FORM QUESTIONS WHEN YOU DO MEET WITH MANAGEMENT.

01:51PM 12 AND, TWO, IT'S A NORMAL PART OF -- IT'S A NORMAL RESPONSE.
01:51PM 13 ANY TIME A COMPANY IN AN EXISTING INDUSTRY IS STRENGTHENED BY
01:51PM 14 SOMETHING DISRUPTIVE, SOMETHING NEW, SOMEBODY OPEN ENDED,
01:51PM 15 THEY'RE ALWAYS GOING TO HAVE SOME, YOU KNOW, WHAT WE WOULD CALL
01:51PM 16 COUNTER DETAIL, SOME ARGUMENT OR MULTIPLE ARGUMENTS FOR WHY
01:51PM 17 THAT COMPANY ISN'T REALLY A RISK, ISN'T REALLY A THREAT.

01:51PM 18 SO IT'S VERY NORMAL, TYPICAL KIND OF THING THAT WE WOULD
01:51PM 19 HEAR.

01:51PM 20 AND THEN AS I SAID BEFORE, WE WANT TO USE THAT TO HELP US
01:51PM 21 ASK BETTER QUESTIONS. IN OTHER WORDS, WHY IS THAT WRONG?
01:51PM 22 OKAY. FINE.

01:51PM 23 AND SO I THINK IN THE BEGINNING OF OUR DUE DILIGENCE
01:51PM 24 PROCESS, WE WERE JUST TRYING TO GET ALL OF THE -- AS MUCH
01:51PM 25 PUBLIC INFORMATION AS WE COULD SO THAT THEY WOULD -- THAT COULD

01:51PM 1 GO INTO THE FORMULATION OF OUR DUE DILIGENCE QUESTIONS THAT WE
01:51PM 2 SENT THE COMPANY.

01:51PM 3 Q. AND WE CAN GO BACK TO THE FIRST PAGE, MS. WACHS.

01:52PM 4 DR. KHANNA OR MR. KHANNA ALSO PROVIDES SOME THOUGHTS AND
01:52PM 5 ONE OF THEM WAS, "PRICING OF MEDICARE IS INTERESTING, BUT OTHER
01:52PM 6 COMMERCIAL PAYORS ARE ALREADY REIMBURSING AT 50-70 PERCENT."

01:52PM 7 "THEY CITE MOORE'S LAW AS DRIVING DOWN COGS -- WE NEED TO
01:52PM 8 GET COMFORTABLE WITH THIS TRAJECTORY."

01:52PM 9 FIRST OF ALL, WHAT IS MOORE'S LAW?

01:52PM 10 A. IT'S A RELATIONSHIP BETWEEN VOLUME AND COST THAT THE
01:52PM 11 FORMER CHAIRMAN AND CEO OF INTEL WAS FAMOUS FOR KIND OF
01:52PM 12 EXPLAINING.

01:52PM 13 IT'S A COST VOLUME RELATIONSHIP THAT INTEL USED THAT HAS
01:53PM 14 BECOME PART OF COMMON BUSINESS TERMS THAT EVERYONE -- THAT
01:53PM 15 PEOPLE USE TO DESCRIBE THAT RELATIONSHIP BETWEEN HIGHER
01:53PM 16 MANUFACTURING VOLUMES AND LOWER COSTS.

01:53PM 17 AND I THINK IN PARTICULAR, IT REFERS TO THE ABILITY OF
01:53PM 18 EVERY 18 MONTHS YOU CAN CUT YOUR COST IN HALF BY DOUBLING YOUR
01:53PM 19 VOLUME. SOME RELATIONSHIP ALONG THOSE LINES.

01:53PM 20 Q. AND IT SAYS, "THEY CITE MOORE'S LAW."

01:53PM 21 WHO IS THE "THEY" IN WHAT MR. KHANNA IS WRITING HERE?

01:53PM 22 A. I, I -- THIS IS, I BELIEVE, REFERRING TO COMMENTS THAT
01:53PM 23 THERANOS MADE TO US IN THAT JANUARY 10TH DUE DILIGENCE MEETING,
01:53PM 24 WHICH MR. KHANNA WAS PART OF THAT MEETING.

01:53PM 25 THAT WAS THE FIRST TIME THAT HE HAD HEARD THE COMPANY, AND

01:53PM 1 THEY TALKED ABOUT HOW MOORE'S LAW WOULD HELP THEM DRIVE DOWN
01:53PM 2 THE COST OF BOTH -- THE EQUIPMENT ORIGINALLY WAS GOING TO BE
01:54PM 3 20, 80 PERCENT OF THE COST OF THE COMPETITIVE EQUIPMENT, AND
01:54PM 4 THEY THOUGHT THEY COULD DRIVE THAT DOWN TO 10- TO 15,000.

01:54PM 5 IT ALSO APPLIED TO THE ASSAYS, LOADING ASSAYS ON
01:54PM 6 CARTRIDGES, AND THEY WOULD ALSO HAVE ECONOMIES OF SCALE. THEY
01:54PM 7 WOULD HAVE COST ADVANTAGES FROM THE VOLUME GROWTH THAT THEY
01:54PM 8 WOULD SEE ON THE TESTING SIDE.

01:54PM 9 Q. YOU ALSO WERE SHOWN -- THANK YOU, MS. WACHS. WE CAN TAKE
01:54PM 10 THAT DOWN.

01:54PM 11 MS. WALSH ALSO WALKED YOU THROUGH THE POWERPOINT THAT
01:54PM 12 MR. BALWANI PROVIDED TO YOU IN THE MIDDLE OF JANUARY.

01:54PM 13 DO YOU RECALL QUESTIONS ABOUT THAT?

01:54PM 14 A. YES.

01:54PM 15 Q. AND THE POWERPOINT THAT YOU GOT, WAS THAT AN IMPORTANT
01:54PM 16 DOCUMENT, AS PART OF YOUR REVIEW OF THE THERANOS INVESTMENT?

01:54PM 17 A. YES.

01:54PM 18 Q. AND SHE SHOWED YOU A CHART OF THE WALGREENS, OF ALL OF THE
01:54PM 19 DIFFERENT WALGREENS WITHIN THE UNITED STATES.

01:54PM 20 DO YOU REMEMBER THAT?

01:54PM 21 A. YES.

01:54PM 22 Q. AND THE RIGHT-HAND SIDE WAS ALL GREEN.

01:55PM 23 DO YOU REMEMBER THAT?

01:55PM 24 A. YEAH. YOU COULDN'T FIT ANYTHING ELSE IN THERE.

01:55PM 25 Q. OKAY. AND YOU UNDERSTOOD THAT THAT WAS FUTURE LOOKING?

01:55PM 1 A. YEAH. THAT WAS THE ROLLOUT FOR THE NEXT TWO OR THREE
01:55PM 2 YEARS.

01:55PM 3 Q. OKAY. HOW DID YOU UNDERSTAND THAT?

01:55PM 4 A. WELL, THEY EXPLAINED TO US THAT -- I MEAN, THE FIRST THING
01:55PM 5 WE TALKED ABOUT IN THE SECOND MEETING AT THEIR CORPORATE
01:55PM 6 HEADQUARTERS WAS HOW THEY HAD TO MOVE QUICKLY TO ROLL OUT
01:55PM 7 NATIONALLY WITH WALGREENS AND HOW THEY NEEDED MONEY TO HELP
01:55PM 8 BUILD MINILABS TO INVEST IN THEIR DATABASE, AND SOME OF THE
01:55PM 9 I.T. THAT -- YOU KNOW, THE INFORMATION TECHNOLOGY THAT THEY
01:55PM 10 NEEDED TO BUILD THE DATA ANALYTICS AROUND THE TESTING VOLUMES
01:55PM 11 THAT THEY WOULD BE -- THE GROWTH IN THE TESTING VOLUMES FROM
01:55PM 12 THE NATIONAL ROLLOUT OF WALGREENS.

01:55PM 13 SO FROM THE VERY BEGINNING, THAT WAS A HUGE FOCUS. AND
01:55PM 14 THAT WAS THE REASON WHY THEY WERE RAISING MONEY.

01:56PM 15 Q. AND IT WAS SOMETHING THAT THEY TOLD YOU?

01:56PM 16 A. YES.

01:56PM 17 Q. OKAY. MS. HOLMES AND MR. BALWANI?

01:56PM 18 A. BOTH.

01:56PM 19 Q. OKAY. LET'S GO TO 4077, PAGE 51.

01:56PM 20 DO YOU SEE THAT NEW POSSIBILITIES IN LAB?

01:56PM 21 IT SHOULD BE ON THE SCREEN, TOO.

01:56PM 22 A. I DO.

01:56PM 23 Q. AND DO YOU SEE WHERE IT SAYS, "ALL 1,000 PLUS CURRENTLY
01:56PM 24 RUN TESTS/CPT CODES ARE AVAILABLE THROUGH THERANOS."

01:56PM 25 A. I DO.

01:56PM 1 Q. AND DID YOU BELIEVE THAT TO BE FORWARD LOOKING?

01:56PM 2 A. NO.

01:56PM 3 Q. DID YOU BELIEVE THAT TO BE ASPIRATIONAL?

01:56PM 4 A. NO.

01:56PM 5 Q. AT ANY POINT IN TIME DID MS. HOLMES OR MR. BALWANI TELL

01:56PM 6 YOU THAT WAS FORWARD LOOKING OR ASPIRATIONAL?

01:56PM 7 A. NO.

01:56PM 8 Q. AND BENEATH THAT IT SAYS, "THERANOS RUNS ANY TEST

01:56PM 9 AVAILABLE IN CENTRAL LABORATORIES."

01:56PM 10 DO YOU BELIEVE THAT TO BE FORWARD LOOKING?

01:56PM 11 A. NO.

01:56PM 12 Q. AT ANY POINT IN TIME DID MR. BALWANI TELL YOU THAT WAS

01:56PM 13 FORWARD LOOKING?

01:56PM 14 A. NO.

01:56PM 15 Q. IF WE CAN GO TO PAGE.

01:57PM 16 DO YOU SEE THE HEADING, "EXCERPTS FROM THERANOS'S TEST

01:57PM 17 MENU"?

01:57PM 18 A. I DO.

01:57PM 19 Q. DO YOU SEE THAT?

01:57PM 20 A. YES.

01:57PM 21 Q. OKAY. DID YOU BELIEVE THIS TO BE FORWARD LOOKING?

01:57PM 22 A. NO.

01:57PM 23 Q. OKAY. DID MR. BALWANI EVER TELL YOU THAT THIS WAS FORWARD

01:57PM 24 LOOKING?

01:57PM 25 A. NO.

01:57PM 1 Q. LET'S GO BACK TO PAGE 67.

01:57PM 2 DO YOU SEE THE IMAGE OF THE THERANOS SYSTEMS?

01:57PM 3 A. YES.

01:57PM 4 Q. DID MR. BALWANI EVER TELL YOU THAT THESE WERE ANALYZERS

01:57PM 5 THAT WE USED TO USE FOR ALL OF OUR ASSAYS SOME DAY?

01:57PM 6 A. NO.

01:57PM 7 Q. AND IF WE COULD GO TO 66. THERE'S A DESCRIPTION OF

01:57PM 8 PRODUCTS.

01:57PM 9 DO YOU SEE THAT?

01:57PM 10 A. I DO.

01:57PM 11 Q. AND THE DEVICE IS MINILAB AND 4S.

01:58PM 12 DO YOU SEE THAT?

01:58PM 13 A. I DO.

01:58PM 14 Q. AND DID YOU BELIEVE THAT TO BE FORWARD LOOKING?

01:58PM 15 A. NO.

01:58PM 16 MR. LEACH: YOUR HONOR, MAY I HAVE A MOMENT?

01:58PM 17 THE COURT: YES.

01:58PM 18 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

01:58PM 19 MR. LEACH: THANK YOU, MR. GROSSMAN. I HAVE NO

01:58PM 20 FURTHER QUESTIONS.

01:58PM 21 THANK YOU, YOUR HONOR.

01:58PM 22 MS. WALSH: NOTHING FURTHER, YOUR HONOR.

01:58PM 23 THE COURT: MAY THIS WITNESS BE EXCUSED?

01:58PM 24 MS. WALSH: YES, YOUR HONOR.

01:58PM 25 MR. LEACH: YES.

01:58PM 1 THE COURT: MR. GROSSMAN, YOU'RE EXCUSED.

01:58PM 2 THE WITNESS: THANK YOU.

01:58PM 3 THE COURT: LET ME INQUIRE, WAS THERE AN EXHIBIT

01:59PM 4 THAT WAS GOING TO BE INTRODUCED BY STIPULATION OR OTHERWISE?

01:59PM 5 MR. LEACH: WE HAVE TWO HOUSEKEEPING MATTERS,

01:59PM 6 YOUR HONOR.

01:59PM 7 THE COURT: YES.

01:59PM 8 MR. LEACH: I THINK I HAVE THE FIRST ONE AND

01:59PM 9 MR. SCHENK HAS THE SECOND ONE.

01:59PM 10 THE COURT: OKAY. THAT'S FINE.

01:59PM 11 MR. LEACH: THE FIRST ONE IS EXHIBIT 4859, WHICH WAS

01:59PM 12 CONDITIONALLY ADMITTED DURING THE TESTIMONY OF MS. SPIVEY. I

01:59PM 13 UNDERSTAND THERE'S NO OBJECTION TO IT BEING FULLY ADMITTED AT

01:59PM 14 THIS TIME.

01:59PM 15 MR. COOPERSMITH: MAY I JUST INQUIRE OF MR. LEACH

01:59PM 16 FOR A SECOND, YOUR HONOR?

01:59PM 17 THE COURT: SURE.

01:59PM 18 (DISCUSSION OFF THE RECORD.)

01:59PM 19 MR. COOPERSMITH: THAT'S CORRECT, YOUR HONOR. NO

01:59PM 20 OBJECTION.

01:59PM 21 THE COURT: ALL RIGHT. THANK YOU.

01:59PM 22 LADIES AND GENTLEMEN, YOU MAY RECALL, AND IT MAY BE

01:59PM 23 REFLECTED IN THE NOTES IF YOU TOOK SOME, THAT EXHIBIT 4859 WAS

01:59PM 24 ADMITTED ONLY CONDITIONALLY PENDING FURTHER EVIDENCE. THAT

01:59PM 25 ITEM 4859 IS NOW ADMITTED IN TOTAL.

02:00PM 1 SO IT IS IN EVIDENCE.

02:00PM 2 (GOVERNMENT'S EXHIBIT 4859 WAS RECEIVED IN EVIDENCE.)

02:00PM 3 MR. LEACH: MY COLLEAGUE, MR. SCHENK, HAS A
02:00PM 4 STIPULATION THAT I BELIEVE THE PARTIES HAVE REACHED.

02:00PM 5 THE COURT: OKAY. ALL RIGHT. THANK YOU.

02:00PM 6 MR. SCHENK: MAY I APPROACH?

02:00PM 7 THE COURT: YES. THANK YOU.

02:00PM 8 MR. SCHENK: (HANDING.)

02:00PM 9 THE COURT: THANK YOU.

02:00PM 10 MR. SCHENK, I'VE BEEN HANDED DOCUMENT 1355, WHICH IS
02:00PM 11 TITLED TRIAL STIPULATION 1. IT APPEARS THAT THE PARTIES HAVE
02:00PM 12 AGREED TO THIS STIPULATION AND THESE ITEMS; IS THAT CORRECT?

02:00PM 13 MR. SCHENK: YES, IT IS.

02:01PM 14 THE COURT: IS THAT CORRECT, MR. COOPERSMITH?

02:01PM 15 MR. COOPERSMITH: YES, YOUR HONOR.

02:01PM 16 THE COURT: ALL RIGHT. THANK YOU.

02:01PM 17 THEN, LADIES AND GENTLEMEN, I'M GOING TO READ A
02:01PM 18 STIPULATION TO YOU NOW AND THIS WILL BECOME PART OF THE RECORD
02:01PM 19 AS WELL, AND YOU'LL HAVE THIS DOCUMENT IN EVIDENCE.

02:01PM 20 THE STIPULATION BETWEEN COUNSEL IS AS FOLLOWS: "THE
02:01PM 21 UNITED STATES AND RAMESH BALWANI THROUGH UNDERSIGNED COUNSEL
02:01PM 22 HEREBY STIPULATE AND AGREE AS FOLLOWS:

02:01PM 23 "1. IN 2013 AND 2014 THERANOS MAINTAINED A BANK ACCOUNT
02:01PM 24 AT COMERICA BANK. DURING THIS TIME PERIOD, THERANOS RECEIVED
02:02PM 25 MONEY VIA THE WIRE TRANSFERS LISTED BELOW FROM THE BANK

02:02PM 1 ACCOUNTS LISTED BELOW TO THERANOS'S COMERICA ACCOUNT. THESE
02:02PM 2 FUNDS WERE TRANSMITTED BY WIRES IN INTERSTATE COMMERCE WITHIN
02:02PM 3 THE MEANING OF 18 UNITED STATES CODE SECTION 1343 VIA THE
02:02PM 4 FEDWIRE FUNDS SERVICE OPERATED BY THE FEDERAL RESERVE BANK OF
02:02PM 5 NEW YORK. EACH WIRE IS AN INTERSTATE WIRE COMMUNICATION."

02:02PM 6 I'LL NOW READ THESE TRANSFERS TO YOU, LADIES AND
02:02PM 7 GENTLEMEN.

02:02PM 8 AGAIN, A COPY OF THIS DOCUMENT WILL BE WITH YOU IN
02:02PM 9 EVIDENCE.

02:03PM 10 I WILL READ THE DATES, THE AMOUNT OF THE TRANSFER, I WILL
02:03PM 11 READ WHO THE TRANSFER IS FROM AND WHO THE TRANSFER IS TO.

02:03PM 12 "DATE: 12-30-2013; THE AMOUNT OF WIRE TRANSFER \$99,990
02:03PM 13 FROM ALAN EISENMAN'S CHARLES SCHWAB, WELLS FARGO BANK ACCOUNT
02:03PM 14 TO THERANOS'S COMERICA BANK ACCOUNT.

02:03PM 15 "DECEMBER 31, 2013; \$5,349,900 FROM BLACK DIAMOND VENTURES
02:03PM 16 PACIFIC WESTERN BANK ACCOUNT TO THERANOS'S COMERICA BANK
02:03PM 17 ACCOUNT.

02:03PM 18 "DECEMBER 31, 2013; \$4,875,000 FROM HALL PHOENIX/INWOOD
02:04PM 19 LIMITED TEXAS CAPITAL BANK ACCOUNT TO THERANOS'S COMERICA BANK
02:04PM 20 ACCOUNT.

02:04PM 21 "FEBRUARY 6TH, 2014; \$38,336,632 FROM PFM HEALTH CARE
02:04PM 22 MASTER FUND LP'S CITIBANK ACCOUNT TO THERANOS'S COMERICA BANK
02:04PM 23 ACCOUNT.

02:04PM 24 "OCTOBER 31ST, 2014; \$99,999,984 FROM LAKE SHORE CAPITAL
02:04PM 25 MANAGEMENT, LP'S NORTHERN CHICAGO BANK ACCOUNT TO THERANOS

02:05PM 1 COMERICA BANK ACCOUNT.

02:05PM 2 "OCTOBER 31, 2014; \$5,999,997 FROM MOSLEY FAMILY HOLDINGS
02:05PM 3 LLC'S JP MORGAN CHASE ACCOUNT TO THERANOS'S COMERICA BANK
02:05PM 4 ACCOUNT.

02:05PM 5 "AUGUST 3, 2015; \$1,126,661 FROM THERANOS'S WELLS FARGO
02:05PM 6 BANK ACCOUNT TO HORIZON MEDIA'S JP MORGAN CHASE BANK ACCOUNT."

02:05PM 7 THIS IS DATED MARCH 11, 2022, AND IT'S SIGNED BY
02:06PM 8 ROBERT LEACH FOR THE GOVERNMENT AND AMY WALSH FOR THE
02:06PM 9 DEFENDANT.

02:06PM 10 COUNSEL, DID I READ THAT STIPULATION ACCURATELY?

02:06PM 11 MR. SCHENK: YES. THANK YOU.

02:06PM 12 MR. COOPERSMITH: YES, YOUR HONOR.

02:06PM 13 THE COURT: ALL RIGHT. THANK YOU.

02:06PM 14 LADIES AND GENTLEMEN, THAT IS THE STIPULATION THAT HAS
02:06PM 15 BEEN ENTERED BY THE PARTIES. PLEASE RECALL IN MY PRELIMINARY
02:06PM 16 INSTRUCTIONS I INSTRUCTED YOU WHAT THE STIPULATION MEANS, AND
02:06PM 17 THIS IS PART OF THE EVIDENCE IN THIS CASE. YOU WILL RECEIVE
02:06PM 18 FINAL INSTRUCTIONS, AGAIN, AS TO STIPULATIONS.

02:06PM 19 ANYTHING FURTHER AS TO HOUSEKEEPING MATTERS FROM THE
02:06PM 20 GOVERNMENT?

02:06PM 21 MR. SCHENK: NO, YOUR HONOR.

02:06PM 22 THE COURT: DOES THE GOVERNMENT HAVE ANOTHER WITNESS
02:06PM 23 TO CALL?

02:06PM 24 MR. SCHENK: YOUR HONOR, THE UNITED STATES RESTS.

02:06PM 25 THE COURT: ALL RIGHT. THANK YOU.

02:06PM 1 LADIES AND GENTLEMEN, THE UNITED STATES HAS RESTED IN THIS
02:06PM 2 MATTER. THAT MEANS THAT THEY HAVE PUT ON ALL OF THE EVIDENCE
02:06PM 3 IN THEIR CASE-IN-CHIEF THAT THEY WISH TO PRESENT TO YOU.

02:06PM 4 LET ME TURN TO THE DEFENDANTS. DOES THE DEFENDANT HAVE
02:06PM 5 ANY EVIDENCE TO OFFER?

02:06PM 6 MR. COOPERSMITH: WE DO, YOUR HONOR. WE HAVE SOME
02:07PM 7 MATTERS TO TAKE UP WITH THE COURT OUTSIDE OF THE PRESENCE OF
02:07PM 8 THE JURY.

02:07PM 9 THE COURT: ALL RIGHT. SHOULD WE TAKE A BRIEF
02:07PM 10 RECESS FOR THAT.

02:07PM 11 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

02:07PM 12 THE COURT: THANK YOU. LET'S TAKE A BRIEF RECESS,
02:07PM 13 LADIES AND GENTLEMEN, SO I CAN TALK WITH THE LAWYERS.

02:07PM 14 (JURY OUT AT 2:07 P.M.)

02:07PM 15 THE COURT: PLEASE BE SEATED. THANK YOU.

02:07PM 16 THE RECORD SHOULD REFLECT THAT THE JURY HAS LEFT THE
02:07PM 17 COURTROOM.

02:07PM 18 ALL COUNSEL, MR. BALWANI REMAIN.

02:07PM 19 MR. COOPERSMITH.

02:07PM 20 MR. COOPERSMITH: YES, YOUR HONOR.

02:08PM 21 BEFORE I PROCEED, COULD I TAKE A THREE MINUTE COMFORT
02:08PM 22 BREAK? WOULD THAT BE --

02:08PM 23 THE COURT: SURE. LET'S TAKE FIVE MINUTES, AND THEN
02:08PM 24 WE'LL COME BACK AND WE'LL PROCEED.

02:08PM 25 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:08PM 1 (RECESS FROM 2:08 P.M. UNTIL 2:25 P.M.)

02:25PM 2 (JURY OUT AT 2:25 P.M.)

02:25PM 3 THE COURT: ALL RIGHT. THANK YOU. WE'RE BACK ON

02:25PM 4 THE RECORD. ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

02:25PM 5 MR. BALWANI IS PRESENT. WE'RE OUTSIDE OF THE PRESENCE OF

02:25PM 6 THE JURY.

02:25PM 7 MR. COOPERSMITH.

02:26PM 8 MR. COOPERSMITH: THANK YOU, YOUR HONOR. THANK YOU

02:26PM 9 FOR THE ACCOMMODATION.

02:26PM 10 THE COURT: OF COURSE.

02:26PM 11 MR. COOPERSMITH: SO WE HAVE TWO MATTERS TO TAKE UP

02:26PM 12 AT THIS TIME NOW THAT THE GOVERNMENT HAS RESTED.

02:26PM 13 THE FIRST ONE IS AN ORAL MOTION THAT WE WOULD LIKE TO MAKE

02:26PM 14 TO STRIKE CERTAIN TESTIMONY FROM A WITNESS THAT THE GOVERNMENT

02:26PM 15 CALLED NAMED SARAH BENNETT. THE COURT MAY RECALL THAT WAS A

02:26PM 16 WITNESS WHO WAS AN EMPLOYEE OF CMS.

02:26PM 17 THE COURT: OKAY.

02:26PM 18 MR. COOPERSMITH: YES, YOUR HONOR.

02:26PM 19 IN PARTICULAR, IN THE TRANSCRIPT OF THIS TRIAL AT PAGE

02:26PM 20 5088, LINE 16 TO PAGE 509 -- AT PAGES 5088, LINE 16 TO

02:26PM 21 PAGE 5094, LINE 6, AND THEN IN ADDITION, AT PAGE 5130, LINE 15

02:27PM 22 TO 5134, LINE 4.

02:27PM 23 THAT TESTIMONY OF MS. BENNETT RELATES TO SOMETHING KNOWN

02:27PM 24 AS THE PATIENT IMPACT ASSESSMENT THAT THERANOS PREPARED,

02:27PM 25 SOMEONE AT THERANOS PREPARED.

02:27PM 1 I'LL ALSO NOTE THAT THE KEY OR THE CRUCIAL TESTIMONY IS AT
02:27PM 2 LINE -- I'M SORRY, PAGE 5133, LINE 21 TO 5134, LINE 4. THAT'S
02:27PM 3 A BRIEF QUESTION AND ANSWER, AND WHEN I READ IT, I THINK THE
02:27PM 4 COURT WILL UNDERSTAND WHAT I'M GETTING AT HERE.

02:27PM 5 SO THE QUESTION WAS AT PAGE 5133, LINE 21:

02:27PM 6 "AND WHAT DID THERANOS TELL YOU IN CONNECTION WITH ANY
02:27PM 7 POSSIBLE PATIENT IMPACT?"

02:27PM 8 AND THEN THERE'S AN OBJECTION BASED ON HEARSAY, RELEVANCE,
02:27PM 9 FOUNDATION, AND RULE 702.

02:28PM 10 THE COURT OVERRULED THE OBJECTION.

02:28PM 11 THE WITNESS THEN ANSWERED: "THERANOS SAID THAT THE
02:28PM 12 LABORATORY HAD CONCLUDED THAT THERE'S A POSSIBLE PATIENT IMPACT
02:28PM 13 FOR EVERY TEST REPORTED FROM THE LABORATORY'S TPS 3.5
02:28PM 14 INSTRUMENT."

02:28PM 15 THAT WAS THE TESTIMONY. THAT'S THE CORE OF WHAT WE'RE
02:28PM 16 MOVING TO STRIKE, YOUR HONOR.

02:28PM 17 THE REST OF THE TESTIMONY THAT I CITED BY PAGE AND LINE
02:28PM 18 NUMBER, THAT IS THE FOUNDATION, BASICALLY, TO GET TO THAT POINT
02:28PM 19 OF THE QUESTION AND ANSWER.

02:28PM 20 SO THE REASON THAT WE'RE MOVING TO STRIKE, YOUR HONOR, IS
02:28PM 21 THAT THIS IS CLEARLY HEARSAY. THIS IS -- THERE'S NO NONHEARSAY
02:28PM 22 PURPOSE FOR THE STATEMENT.

02:28PM 23 THE GOVERNMENT, I BELIEVE, SUGGESTED THERE MIGHT BE NOTICE
02:28PM 24 TO THE CMS EMPLOYEE, MS. BENNETT. I DON'T THINK THAT IS A
02:28PM 25 RELEVANT REASON TO HAVE IT ADMITTED OR ALLOW THE QUESTION AND

02:28PM 1 ANSWER.

02:28PM 2 THE NOTICE TO MS. BENNETT IS IRRELEVANT AT THAT POINT IN
02:28PM 3 TIME, AND IT'S HEARSAY.

02:28PM 4 AND WHAT I RECALL FROM THE TIME THAT TESTIMONY WAS
02:29PM 5 OFFERED, YOUR HONOR, WAS THAT THERE WAS AN ARGUMENT THAT THIS
02:29PM 6 WAS AN AGENCY SITUATION. THERE WAS AN ADMISSION UNDER
02:29PM 7 801(D) (2) .

02:29PM 8 I JUST WANT TO TICK THROUGH THOSE, SO MY ARGUMENT IS AS
02:29PM 9 CLEAR AS I CAN MAKE IT.

02:29PM 10 THE STATEMENT, OF COURSE, WAS NOT MADE BY MR. BALWANI.
02:29PM 11 THERE WAS NO EVIDENCE THAT DR. DAS, WHO WE BELIEVE IS THE
02:29PM 12 PERSON WHO WROTE THE -- OR AUTHORED THE STATEMENT, THERE WAS NO
02:29PM 13 EVIDENCE THAT DR. DAS WAS REPRESENTING MR. BALWANI UNDER
02:29PM 14 SUBSECTION (D) (2) (A) ; THERE'S NO EVIDENCE THAT MR. BALWANI
02:29PM 15 ADOPTED OR BELIEVED THE STATEMENT TO BE TRUE UNDER (D) (2) (B) ;
02:29PM 16 THERE'S NO EVIDENCE THAT MR. BALWANI AUTHORIZED DR. DAS TO MAKE
02:29PM 17 THE STATEMENT UNDER SUBSECTION (D) (2) (C) ; THERE'S NO EVIDENCE
02:29PM 18 THAT DR. DAS WAS MR. BALWANI'S AGENT, NOT AN ACTUAL AGENT AND
02:29PM 19 NOT AN APPARENT AGENT FOR PURPOSES OF THE STATEMENT; THERE'S NO
02:29PM 20 EVIDENCE, OF COURSE, THAT DR. DAS WAS A COCONSPIRATOR UNDER
02:30PM 21 (D) (2) (E) ; AND THERE IS NO EVIDENCE THAT MR. BALWANI SUPERVISED
02:30PM 22 DR. DAS.

02:30PM 23 IN FACT, THE COURT MAY RECALL WHAT WE DO KNOW ABOUT
02:30PM 24 DR. DAS FROM THE PREVIOUS TRIAL, HE OBVIOUSLY DIDN'T TESTIFY
02:30PM 25 HERE. WHAT WE KNOW FROM THE PREVIOUS TRIAL, AND THAT'S THE

02:30PM 1 TRIAL TRANSCRIPT OF THE HOLMES TRIAL AT PAGE 5794, THAT DR. DAS
02:30PM 2 TESTIFIED HE HAD QUITE A MINIMUM NUMBER OF INTERACTIONS WITH
02:30PM 3 MR. BALWANI, FAIRLY LIMITED CHANCES TO INTERACT.

02:30PM 4 SO FOR THESE REASONS, YOUR HONOR, WE THINK THAT THE
02:30PM 5 STATEMENT SHOULD BE STRICKEN OR STRUCK FROM THE RECORD.

02:30PM 6 I'LL JUST ADD, YOUR HONOR, THAT DR. DAS'S CONCLUSION THAT
02:30PM 7 WENT INTO THAT QUESTION ABOUT PATIENT IMPACT AND THE CONCLUSION
02:30PM 8 THAT DR. DAS HAD REACHED THAT THERE WAS A POSSIBLE PATIENT
02:30PM 9 IMPACT FOR EVERY TEST REPORTED ON THE 3.5 EDISON, THAT WAS THE
02:31PM 10 RESULT OF A SOPHISTICATED TECHNICAL ANALYSIS USING THE LIS
02:31PM 11 SYSTEM. THE GOVERNMENT CONCEDED THAT AT DOCKET 1440 AT
02:31PM 12 PAGE 14.

02:31PM 13 AND BY OFFERING THIS CONCLUSION AS HEARSAY THROUGH
02:31PM 14 MS. BENNETT, THE GOVERNMENT IS REALLY INFRINGING ON
02:31PM 15 MR. BALWANI'S CONFRONTATION CLAUSE RIGHTS TO TEST THE
02:31PM 16 STATEMENT, TO TEST THE QUALIFICATIONS AND THE CONCLUSIONS OF
02:31PM 17 DR. DAS BASED ON THE DATA THAT DR. DAS REVIEWED, WHICH WE THINK
02:31PM 18 IS NO LONGER AVAILABLE.

02:31PM 19 AND THEN THE HEARSAY APPROACH TO GETTING IN THAT EVIDENCE
02:31PM 20 I THINK EXACERBATES THE PROBLEM OF THE MISSING LIS DATABASE,
02:31PM 21 BECAUSE THAT WAS THE BASIS OF WHAT DR. DAS WAS REVIEWING IN
02:31PM 22 ORDER TO REACH THAT CONCLUSION.

02:31PM 23 SO FOR THOSE REASONS, YOUR HONOR, WE ARE MOVING TO STRIKE
02:31PM 24 THAT TESTIMONY, AND I HAVE ALREADY CITED THE LINES AND PAGE
02:31PM 25 NUMBERS.

02:31PM 1 THE COURT: ALL RIGHT. THANK YOU.

02:32PM 2 MR. LEACH.

02:32PM 3 MR. LEACH: YOUR HONOR, THE GOVERNMENT OPPOSES THE
02:32PM 4 MOTION TO STRIKE MS. BENNETT'S TESTIMONY.

02:32PM 5 WE THINK THE COURT APPROPRIATELY RULED IN THE MOMENT
02:32PM 6 REGARDING THE POTENTIAL PATIENT IMPACT WAS APPROPRIATE AT THE
02:32PM 7 TIME. THE STATEMENTS WERE NOT HEARSAY.

02:32PM 8 MR. BALWANI WAS THE CHIEF OPERATING OFFICER OF THE COMPANY
02:32PM 9 AT THE TIME, AND THERE ARE MULTIPLE SPREADSHEETS SHOWING THAT
02:32PM 10 AS CHIEF OPERATING OFFICER, HE HAD RESPONSIBILITY FOR THE
02:32PM 11 ENTIRE LAB. AND IN THE CONTEXT OF THIS PARTICULAR INSPECTION,
02:32PM 12 HE PROVIDED A DOCUMENT TO CMS THAT SAYS I'M FULLY RESPONSIBLE
02:32PM 13 FOR THE LAB. HE CONTINUED IN THAT EMPLOYMENT THROUGH JULY OF
02:33PM 14 2016. SO WE THINK IT'S NOT HEARSAY UNDER 801(D)(2).

02:33PM 15 IN ADDITION, IT'S APPROPRIATELY OFFERED FOR THE NONHEARSAY
02:33PM 16 PURPOSE OF EXPLAINING WHY MS. BENNETT DID NOT PUT IN HER
02:33PM 17 STATEMENT OF DEFICIENCIES OR ANY SUBSEQUENT ITERATION OF THEM A
02:33PM 18 PATIENT IMPACT ASSESSMENT WITH RESPECT TO THE PARTICULAR THINGS
02:33PM 19 SHE WAS FINDING.

02:33PM 20 THERE WERE MULTIPLE QUESTIONS IN CROSS-EXAMINATION WHERE
02:33PM 21 THE DEFENSE ELICITED TESTIMONY, "AND YOU DIDN'T SAY HERE THERE
02:33PM 22 WAS A POTENTIAL PATIENT IMPACT?"

02:33PM 23 THE REASON FOR THAT IS BECAUSE THE LAB IS EXPECTED TO DO
02:33PM 24 THAT AND THE LAB DIRECTOR, UNDER THE SUPERVISION OF MS. HOLMES
02:33PM 25 AND MR. BALWANI, ARE EXPECTED TO DO THAT. AND THE EVIDENCE WAS

02:33PM 1 IMPORTANT CONTEXT TO EXPLAIN WHY THAT INFORMATION WASN'T THERE,
02:33PM 2 AND IT WASN'T ADDED IN A SECOND PERIOD OF TIME.

02:33PM 3 FINALLY, IT'S NOT EXPERT TESTIMONY. IT'S THE CONCLUSIONS
02:34PM 4 MADE IN THE TIME BY APPROPRIATE PERSONNEL IN THERANOS. I DON'T
02:34PM 5 THINK IT'S APPROPRIATE TO LOOK TO EVIDENCE IN THE HOLMES CASE
02:34PM 6 ABOUT WHAT THE BASIS OF THE ADMISSION IS IN THIS CASE.

02:34PM 7 BUT MY MEMORY OF DR. DAS IS THAT HE DID NOT RELY ON THE
02:34PM 8 LIS FOR THOSE CONCLUSIONS. HE RELIED ON VALIDATION REPORTS,
02:34PM 9 WHICH ARE IN EVIDENCE IN THIS CASE.

02:34PM 10 SO FOR A HOST OF REASONS, WE THINK THE MOTION TO STRIKE
02:34PM 11 SHOULD BE DENIED. AND THE COURT MADE THE APPROPRIATE RULINGS
02:34PM 12 IN THE MOMENT, I WOULD SAY AFTER EXTENSIVE ARGUMENT FROM, FROM
02:34PM 13 BOTH SIDES, AND AN OPPORTUNITY BY THE COURT TO GO BACK AND
02:34PM 14 REVIEW ITS MOTION AND IN LIMINE ORDER. SO I SEE NO REASON TO
02:34PM 15 REVISIT THOSE. THE ADMISSION WASN'T CONDITIONED ON ANY
02:34PM 16 SUBSEQUENT EVIDENCE.

02:34PM 17 SO FOR ALL OF THESE REASONS AND OTHERS, WE OPPOSE THE
02:34PM 18 MOTION. AND TO THE EXTENT THAT THE COURT HAS FURTHER CONCERNS
02:34PM 19 ABOUT IT, WE WOULD LIKE THE OPPORTUNITY TO BRIEF IT AT AN
02:34PM 20 APPROPRIATE TIME.

02:35PM 21 THE COURT: OKAY. THANK YOU.

02:35PM 22 MR. COOPERSMITH: YOUR HONOR, I'M HAPPY TO BRIEF THE
02:35PM 23 ISSUE IF THE COURT FOUND THAT -- FINDS THAT HELPFUL.

02:35PM 24 BUT I'LL JUST SAY THAT THE BASIC ISSUE HERE, OF COURSE, IS
02:35PM 25 WHO IS MR. DAS -- DR. DAS SPEAKING FOR WHEN HE MAKES THE

02:35PM 1 STATEMENT THAT WAS ADMITTED THROUGH MS. BENNETT, NOT DR. DAS.

02:35PM 2 AND HE WORKED FOR THERANOS, WE ALL KNOW THAT. BUT HE'S
02:35PM 3 NOT MR. BALWANI'S AGENT. THERE'S BEEN NO EVIDENCE ADDUCED AT
02:35PM 4 THIS TRIAL THAT MR. -- DR. DAS IS MR. BALWANI'S AGENT OR THAT
02:35PM 5 MR. BALWANI IN ANY WAY AUTHORIZED THIS.

02:35PM 6 AND GENERAL STATEMENTS THAT MR. BALWANI WAS STILL THE COO
02:35PM 7 I DON'T THINK DO IT, ESPECIALLY GIVEN WHAT WE KNOW IS THAT
02:35PM 8 THERE WAS LITTLE INTERACTION BETWEEN THE TWO.

02:35PM 9 AND THEN AS FOR THE NONHEARSAY PURPOSE, AS I'VE SAID, I
02:35PM 10 THINK THAT WOULD BE, YOU KNOW, A SIGNIFICANT 403 AND
02:35PM 11 CONFRONTATION CLAUSE PROBLEM ISSUE TO HAVE -- TO ALLOW THAT
02:35PM 12 KIND OF TESTIMONY FOR THE SIMPLE REASON OF GIVING THE CMS
02:36PM 13 EMPLOYEE NOTICE.

02:36PM 14 BUT I DON'T EVEN SEE HOW THAT'S RELEVANT THAT SHE HAS
02:36PM 15 NOTICE OF SOMETHING THAT WOULD HAVE ENABLED HER TO DECIDE WHAT
02:36PM 16 TO DO WITH THE LAB AFTER THE STATEMENT WAS MADE, WHICH WAS SOME
02:36PM 17 TIME IN THE SPRING OF 2016. THAT WOULD BE AFTER ALL OF THE
02:36PM 18 EVENTS REALLY AT ISSUE OCCURRED, INCLUDING THE CMS INSPECTION
02:36PM 19 AND THE CMS REPORT, WHICH WAS IN JANUARY '16.

02:36PM 20 SO I DON'T THINK THAT THOSE THINGS SHOULD SWAY IT.

02:36PM 21 AGAIN, WE'RE HAPPY TO BRIEF IT --

02:36PM 22 THE COURT: OKAY.

02:36PM 23 MR. COOPERSMITH: -- IF THAT'S WHAT THE COURT WANTS,
02:36PM 24 BUT I DON'T THINK IT IS ADMISSIBLE.

02:36PM 25 AND THEN THE LAST THING I'LL SAY IS THAT IF IT IS ONLY FOR

02:36PM 1 THE NONHEARSAY PURPOSE, THEN THERE WAS NO LIMITING INSTRUCTION,
02:36PM 2 AND THE JURY WAS NOT TOLD THAT THAT'S THE ONLY THING THAT THEY
02:36PM 3 CAN CONSIDER IT FOR. AT A BEAR MINIMUM, THAT WOULD BE
02:36PM 4 APPROPRIATE.

02:36PM 5 BUT OUR ARGUMENT IS THAT THE WHOLE TESTIMONY SHOULD BE
02:36PM 6 STRUCK.

02:36PM 7 THE COURT: ALL RIGHT. ANYTHING FURTHER?

02:36PM 8 MR. LEACH: NO, YOUR HONOR.

02:36PM 9 THE COURT: OKAY. ANYTHING FURTHER?

02:36PM 10 MR. COOPERSMITH: NO, YOUR HONOR.

02:36PM 11 THE COURT: OKAY. THANK YOU VERY MUCH. THANKS.

02:37PM 12 I'LL LOOK AT THIS.

02:37PM 13 DO YOU NEED A DECISION ON THIS BEFORE YOU BEGIN YOUR
02:37PM 14 CASE-IN-CHIEF?

02:37PM 15 MR. COOPERSMITH: NO, YOUR HONOR.

02:37PM 16 THE COURT: ALL RIGHT. I'LL TAKE THIS UNDER
02:37PM 17 ADVISEMENT, AND I'LL LOOK AT THE PAGES THAT YOU CITED.

02:37PM 18 AND SHOULD I WISH YOU TO FILE SOME LIMITED BRIEFING, I'LL
02:37PM 19 ASK YOU FOR THAT.

02:37PM 20 WILL THAT IN ANY WAY JEOPARDIZE YOUR ABILITY TO GO
02:37PM 21 FORWARD?

02:37PM 22 MR. COOPERSMITH: NO, YOUR HONOR.

02:37PM 23 THE COURT: ALL RIGHT. OKAY. THANK YOU.

02:37PM 24 MR. COOPERSMITH: AND THEN THE SECOND MATTER IS THAT
02:37PM 25 AT THIS TIME WE MOVE FOR JUDGMENT OF ACQUITTAL UNDER RULE 29.

02:37PM 1 WE MOVE FOR JUDGMENT OF ACQUITTAL BECAUSE WE BELIEVE THE
02:37PM 2 GOVERNMENT'S CASE HAS FAILED TO PRESENT SUFFICIENT EVIDENCE ON
02:37PM 3 EVERY ELEMENT OF EVERY COUNT.

02:37PM 4 WE ARE HAPPY TO ADDRESS THIS IN MORE DETAIL WHEN IT'S
02:37PM 5 CONVENIENT FOR THE COURT AT A LATER TIME, BUT WE DO WANT TO
02:37PM 6 MAKE THAT MOTION NOW UNDER RULE 29.

02:37PM 7 THE COURT: OKAY. THANK YOU.

02:37PM 8 MR. LEACH, ANYTHING AT LEAST FOR THIS PRELIMINARILY?

02:37PM 9 MR. LEACH: NO, YOUR HONOR.

02:37PM 10 WE OPPOSE THE MOTION. WE BELIEVE THE GOVERNMENT HAS
02:37PM 11 SUBMITTED SUFFICIENT EVIDENCE TO SUPPORT EACH OF THE ELEMENTS
02:38PM 12 OF EACH OF THE COUNTS, AND THE COURT IS WITHIN ITS PREROGATIVE
02:38PM 13 TO DECIDE THE MOTION OR RESERVE UNTIL A LATER DATE.

02:38PM 14 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

02:38PM 15 ANYTHING FURTHER?

02:38PM 16 MR. COOPERSMITH: NO, YOUR HONOR.

02:38PM 17 THE COURT: WELL, UNDER RULE 29(B), THE COURT WILL
02:38PM 18 RESERVE ANY POSITION ON THIS, BUT THE RECORD SHOULD REFLECT
02:38PM 19 THAT YOU HAVE TIMELY MADE A RULE 29 MOTION AT THE CLOSE OF THE
02:38PM 20 GOVERNMENT'S CASE AND PRIOR TO ANY EVIDENCE OFFERED BY THE
02:38PM 21 DEFENDANT.

02:38PM 22 SO YOUR RULE 29 MOTION IS PRESERVED FOR THAT PURPOSE, AND
02:38PM 23 UNDER RULE 29(B), THE COURT WILL RESERVE ANY DECISION UNTIL A
02:38PM 24 LATER TIME.

02:38PM 25 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:38PM 1 THE COURT: YOU'RE WELCOME.

02:38PM 2 ANYTHING FURTHER ON THIS?

02:38PM 3 MR. COOPERSMITH: NO, YOUR HONOR.

02:38PM 4 THE COURT: OKAY.

02:38PM 5 DO YOU HAVE A WITNESS TO CALL THEN?

02:38PM 6 MR. COOPERSMITH: YES, YOUR HONOR.

02:38PM 7 THE COURT: ALL RIGHT. SHOULD WE BRING THE JURY IN

02:38PM 8 NOW?

02:38PM 9 MR. COOPERSMITH: THAT WOULD BE FINE.

02:38PM 10 MR. LEACH: YES, YOUR HONOR.

02:38PM 11 THE COURT: OKAY.

02:41PM 12 (JURY IN AT 2:41 P.M.)

02:41PM 13 THE COURT: PLEASE BE SEATED. THANK YOU, LADIES AND

02:41PM 14 GENTLEMEN.

02:41PM 15 ALL RIGHT. WE'RE BACK ON THE RECORD.

02:41PM 16 OUR JURY AND ALTERNATES ARE PRESENT.

02:41PM 17 ALL COUNSEL ARE PRESENT. THE DEFENDANT IS PRESENT.

02:41PM 18 MR. COOPERSMITH, DOES THE DEFENSE HAVE A WITNESS TO CALL?

02:41PM 19 MR. COOPERSMITH: YES, YOUR HONOR.

02:41PM 20 THE DEFENSE CALLS DR. TRACY WOOTEN.

02:41PM 21 THE COURT: ALL RIGHT. GOOD AFTERNOON. IF YOU

02:42PM 22 WOULD COME FORWARD AND STAND OVER HERE WHILE YOU FACE OUR

02:42PM 23 COURTROOM DEPUTY. IF YOU WOULD RAISE YOUR RIGHT HAND, SHE HAS

02:42PM 24 A QUESTION FOR YOU.

02:42PM 25 **(DEFENDANT'S WITNESS, TRACY WOOTEN, WAS SWORN.)**

02:42PM 1 THE WITNESS: YES.

02:42PM 2 THE COURT: THANK YOU.

02:42PM 3 PLEASE HAVE A SEAT UP HERE AND MAKE YOURSELF COMFORTABLE.

02:42PM 4 THE WITNESS: OKAY.

02:42PM 5 THE COURT: PLEASE FEEL FREE TO ADJUST THE CHAIR AND

02:42PM 6 MICROPHONE AS YOU NEED.

02:42PM 7 THERE'S SOME WATER THERE FOR YOUR REFRESHMENT SHOULD YOU

02:42PM 8 WISH IT.

02:42PM 9 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME

02:42PM 10 AND THEN SPELL IT, PLEASE.

02:42PM 11 THE WITNESS: TRACY WOOTEN. T-R-A-C-Y, WOOTEN,

02:42PM 12 W-O-O-T-E-N.

02:42PM 13 THE COURT: THANK YOU.

02:43PM 14 COUNSEL.

02:43PM 15 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:43PM 16 **DIRECT EXAMINATION**

02:43PM 17 BY MR. COOPERSMITH:

02:43PM 18 Q. GOOD AFTERNOON, DR. WOOTEN.

02:43PM 19 A. GOOD AFTERNOON.

02:43PM 20 Q. AND DO YOU PREFER TO TESTIFY IN A CLEAR MASK AS YOU HAVE

02:43PM 21 ON RIGHT NOW?

02:43PM 22 A. WHAT?

02:43PM 23 Q. IF YOU WOULD LIKE TO TESTIFY IN A CLEAR MASK, THAT'S FINE.

02:43PM 24 I JUST WANTED TO ASK YOU.

02:43PM 25 A. OH, THAT'S FINE.

02:43PM 1 Q. OKAY. DR. WOOTEN, WHERE DID YOU TRAVEL FROM TO ATTEND
02:43PM 2 COURT THIS AFTERNOON?

02:43PM 3 A. I CAME FROM PHOENIX, ARIZONA.

02:43PM 4 Q. AND WHAT DO YOU DO IN PHOENIX, ARIZONA?

02:43PM 5 A. I'M A LICENSED NATUROPATHIC PHYSICIAN.

02:43PM 6 Q. AND WHAT IS A NATUROPATHIC PHYSICIAN?

02:43PM 7 A. A NATUROPATHIC PHYSICIANS ARE PRIMARY CARE PROVIDERS THAT
02:43PM 8 USE A HOLISTIC APPROACH TO TREAT THEIR PATIENTS.

02:43PM 9 Q. AND WHEN YOU SAY "HOLISTIC APPROACH," COULD YOU GIVE US A
02:43PM 10 BIT LITTLE MORE DETAIL ABOUT WHAT THAT MEANS?

02:43PM 11 A. YES, DEFINITELY.

02:43PM 12 SO WE DIAGNOSE AND TREAT ACUTE OR CHRONIC ILLNESSES. WE
02:43PM 13 TRY TO TREAT THE WHOLE BODY AND LOOK FOR UNDERLYING ISSUES THAT
02:44PM 14 CAUSE THE ILLNESS VERSUS JUST TREAT THE SYMPTOMS.

02:44PM 15 Q. OKAY. THANK YOU.

02:44PM 16 IN ARIZONA, IS THERE A LICENSE YOU HAVE TO OBTAIN TO BE A
02:44PM 17 NATUROPATHIC PHYSICIAN?

02:44PM 18 A. YES. WE HAVE TO HAVE A DOCTORATE OF NATUROPATHIC MEDICINE
02:44PM 19 AND WE ALSO HAVE TO HAVE A MEDICAL LICENSE.

02:44PM 20 Q. AND WHO ISSUES THAT LICENSE?

02:44PM 21 A. THE ARIZONA BOARD OF NATUROPATHIC -- I'M SORRY.
02:44PM 22 NP BOMAX, AND THEN WE HAVE A LICENSING BOARD.

02:44PM 23 Q. OKAY. AND HOW LONG HAVE YOU BEEN A NATUROPATHIC PHYSICIAN
02:44PM 24 IN THE PHOENIX, ARIZONA AREA?

02:44PM 25 A. SEVENTEEN YEARS.

02:44PM 1 Q. SO DOES THAT GO BACK TO ABOUT 2005?

02:44PM 2 A. CORRECT, I GRADUATED.

02:44PM 3 Q. AND WHAT EDUCATION DID YOU HAVE TO OBTAIN TO BECOME A

02:44PM 4 NATUROPATHIC PHYSICIAN?

02:44PM 5 A. YOU HAVE TO HAVE AN UNDERGRAD DEGREE, AND THEN GO TO A

02:44PM 6 NATUROPATHIC MEDICAL SCHOOL, AND THEN PASS A MEDICAL BOARD

02:45PM 7 EXAM.

02:45PM 8 Q. ARE THERE EXAMS THAT YOU HAVE TO TAKE?

02:45PM 9 A. YES, WE HAVE A MEDICAL LICENSE.

02:45PM 10 Q. OKAY. AND WHERE DID YOU GO TO UNDERGRADUATE?

02:45PM 11 A. ORAL ROBERTS UNIVERSITY.

02:45PM 12 Q. DID YOU GRADUATE FROM ORAL ROBERTS?

02:45PM 13 A. I DID.

02:45PM 14 Q. AND WHERE DID YOU ATTEND NATUROPATHIC MEDICAL SCHOOL?

02:45PM 15 A. SOUTHWEST COLLEGE OF NATUROPATHIC MEDICINE.

02:45PM 16 Q. WHERE IS THAT?

02:45PM 17 A. IN TEMPE, ARIZONA.

02:45PM 18 Q. OKAY. TEMPE, ARIZONA. IS THAT NEAR WHERE YOU CURRENTLY

02:45PM 19 LIVE?

02:45PM 20 A. CORRECT.

02:45PM 21 Q. WHAT WAS YOUR UNDERGRADUATE DEGREE IN?

02:45PM 22 A. EXERCISE PHYSIOLOGY.

02:45PM 23 Q. OKAY. DO YOU WORK FOR AN EMPLOYER OR DO YOU HAVE YOUR OWN

02:45PM 24 BUSINESS?

02:45PM 25 A. I HAVE A PRIVATE PRACTICE. I WORK FOR MYSELF.

02:45PM 1 Q. YOU HAVE YOUR OWN PRACTICE?

02:45PM 2 A. YEAH.

02:45PM 3 Q. AND WHAT IS THE NAME OF YOUR PRACTICE?

02:45PM 4 A. WOOTEN NATUROPATHIC.

02:45PM 5 Q. AND HOW LONG HAVE YOU HAD THAT BUSINESS?

02:45PM 6 A. SEVENTEEN YEARS.

02:46PM 7 Q. AND DO YOU HAVE EMPLOYEES THAT WORK FOR YOU?

02:46PM 8 A. I DO.

02:46PM 9 Q. AND DO YOU HAVE PATIENTS WHO COME TO SEE YOU FOR YOUR

02:46PM 10 MEDICAL SERVICES?

02:46PM 11 A. I DO.

02:46PM 12 Q. AS WE SIT HERE TODAY, ABOUT HOW MANY PATIENTS DO YOU HAVE

02:46PM 13 OVERALL IN YOUR PRACTICE?

02:46PM 14 A. CURRENTLY THIS YEAR I HAVE SEEN OVER 500.

02:46PM 15 Q. AND IF YOU THINK BACK TO THE, YOU KNOW, 2015 TIMEFRAME,

02:46PM 16 HOW MANY PATIENTS WILL YOU ESTIMATE YOU WOULD HAVE HAD IN YOUR

02:46PM 17 PRACTICE AT THAT TIME?

02:46PM 18 A. PROBABLY AROUND 350.

02:46PM 19 Q. OKAY. SO HAS YOUR PRACTICE GROWN SINCE 2015?

02:46PM 20 A. IT HAS.

02:46PM 21 Q. IN CONNECTION WITH YOUR PRACTICE -- WELL, LET ME ASK YOU

02:46PM 22 THIS FIRST, IN ARIZONA, CAN A NATUROPATHIC PHYSICIAN LIKE

02:46PM 23 YOURSELF PRESCRIBE MEDICATION FOR PATIENTS?

02:46PM 24 A. WE CAN.

02:46PM 25 Q. AND THAT'S ALLOWED BY YOUR LICENSING?

02:46PM 1 A. CORRECT.

02:46PM 2 Q. AND CAN A NATUROPATHIC PHYSICIAN IN ARIZONA ORDER BLOOD

02:46PM 3 TESTS FOR PATIENTS?

02:46PM 4 A. WE CAN.

02:46PM 5 Q. AND DO YOU DO THAT?

02:46PM 6 A. YES.

02:46PM 7 Q. FOR WHAT PURPOSE DO YOU ORDER BLOOD TESTS FOR YOUR

02:46PM 8 PATIENTS IN GENERAL?

02:46PM 9 A. I DO A LOT OF LAB TESTING TO ESTABLISH A BASE LINE TO HELP

02:47PM 10 ME WITH DIAGNOSING AND TREATMENT AND ALSO TO MONITOR THERAPIES.

02:47PM 11 Q. WHEN YOU SAY, "TO ESTABLISH A BASE LINE," CAN YOU GIVE US

02:47PM 12 A LITTLE MORE DETAIL ABOUT WHAT THAT MEANS?

02:47PM 13 A. YES. TYPICALLY WHEN A PATIENT COMES TO ME, IF THEY

02:47PM 14 HAVEN'T HAD BLOOD WORK DONE RECENTLY WITHIN THE LAST TWO

02:47PM 15 MONTHS, I GET BLOOD WORK DONE TO SEE WHAT THEIR STARTING STATS

02:47PM 16 ARE, AND THEN, THEREFORE, WHEN WE START TREATMENT, I HAVE A

02:47PM 17 BASE LINE.

02:47PM 18 Q. OKAY. AND IF YOU'RE TREATING A HEALTHY PATIENT IN YOUR

02:47PM 19 PRACTICE, IN GENERAL, ABOUT HOW OFTEN WOULD YOU HAVE BLOOD

02:47PM 20 TESTS DONE FOR THAT PATIENT?

02:47PM 21 A. IF THE PATIENT IS HEALTHY AND ALSO DEPENDING ON THE

02:47PM 22 ISSUES, ABOUT EVERY THREE MONTHS.

02:47PM 23 Q. ABOUT EVERY THREE MONTHS?

02:47PM 24 A. CORRECT.

02:47PM 25 Q. AND IS THAT, IN YOUR VIEW, DR. WOOTEN, A FREQUENT -- A LOT

02:47PM 1 OF BLOOD TESTS --

02:47PM 2 A. YES.

02:47PM 3 Q. -- GIVEN OTHER SITUATIONS?

02:47PM 4 A. CORRECT.

02:47PM 5 Q. AND WHY DO YOU DO SO MANY BLOOD TESTS?

02:48PM 6 A. BECAUSE I WANT TO ESTABLISH TREATMENT AND MAKE SURE THE

02:48PM 7 THERAPY IS GOING IN THE RIGHT DIRECTION, AND ALSO MAKE SURE WE

02:48PM 8 CATCH ANYTHING. IT IS MORE OF A PREVENTATIVE HOLISTIC

02:48PM 9 APPROACH. SO WE WANT TO MAKE SURE THINGS ARE GOING IN THE

02:48PM 10 RIGHT DIRECTION BEFORE THEY GO OFF.

02:48PM 11 Q. SO, IF I UNDERSTAND THAT, WHEN YOU ORDER BLOOD TESTS FOR

02:48PM 12 YOUR PATIENTS, DO YOU LOOK AT THE TRENDS THAT THE PATIENTS ARE

02:48PM 13 EXPERIENCING?

02:48PM 14 A. CORRECT.

02:48PM 15 Q. OKAY. AND DO YOU COMPARE ONE BLOOD TEST TO THE OTHER FOR

02:48PM 16 THAT PURPOSE?

02:48PM 17 A. ABSOLUTELY.

02:48PM 18 Q. OKAY. AND IS THAT COMMON IN THE NATUROPATHIC MEDICAL

02:48PM 19 FIELD TO ORDER BLOOD TESTS AS YOU UNDERSTAND IT?

02:48PM 20 A. YES.

02:48PM 21 MR. SCHENK: OBJECTION. 702.

02:48PM 22 THE COURT: ARE YOU ASKING IF THIS IS HOW SHE WAS

02:48PM 23 TRAINED?

02:48PM 24 MR. COOPERSMITH: HER OWN EXPERIENCE AND HOW SHE WAS

02:48PM 25 TRAINED, YES, YOUR HONOR.

02:48PM 1 THE COURT: I'LL ALLOW THAT ANSWER TO REMAIN.

02:48PM 2 MR. COOPERSMITH: OKAY. I'M NOT SURE WE GOT AN

02:48PM 3 ANSWER, BUT MAYBE I CAN ASK IT AGAIN, YOUR HONOR.

02:48PM 4 THE COURT: HER ANSWER WAS YES.

02:48PM 5 MR. COOPERSMITH: OKAY. THANK YOU. THAT'S HELPFUL.

02:49PM 6 Q. OKAY. DR. WOOTEN, IS THAT PRACTICE THAT YOU ENGAGE OF

02:49PM 7 HAVING PATIENTS TAKE BLOOD TESTS AND THEN COMPARE THE RESULTS,

02:49PM 8 DOES THAT GIVE YOU AN OPPORTUNITY TO COMPARE THE DIFFERENT

02:49PM 9 BLOOD TESTS THAT THE PATIENTS ARE TAKING OVER TIME?

02:49PM 10 A. CORRECT, YES.

02:49PM 11 Q. AND WE'LL GET TO THERANOS IN A MINUTE, BUT PUTTING THAT

02:49PM 12 ASIDE, WHERE, PRIOR TO 2015, LET'S SAY, DID YOU SEND YOUR

02:49PM 13 PATIENTS FOR BLOOD TESTS?

02:49PM 14 A. I MAINLY USED SONORAQUEST LABS.

02:49PM 15 Q. SONORAQUEST?

02:49PM 16 A. YES.

02:49PM 17 Q. AND IS THAT A WELL ESTABLISHED LAB IN ARIZONA?

02:49PM 18 A. IT IS.

02:49PM 19 Q. AND ABOUT HOW LONG BEFORE 2015 HAD YOU BEEN SENDING YOUR

02:49PM 20 PATIENTS TO SONORAQUEST?

02:49PM 21 A. 2006.

02:49PM 22 Q. AND DO YOU USE OTHER LABS OR HAD YOU USED OTHER LABS IN

02:49PM 23 ADDITION TO SONORAQUEST?

02:49PM 24 A. YES, I HAVE.

02:49PM 25 Q. CAN YOU REMEMBER THE NAMES?

02:49PM 1 A. YES, LIKE LABCORP.

02:49PM 2 Q. IS LABCORP ONE?

02:49PM 3 A. YES.

02:49PM 4 Q. ANYTHING ELSE THAT YOU CAN REMEMBER?

02:49PM 5 A. AND THEN I ALSO USE SPECIALTY LABS FOR FOOD TESTING.

02:50PM 6 Q. OKAY. IN CONNECTION WITH YOUR EXPERIENCE WITH

02:50PM 7 SONORAQUEST, TAKING THAT ONE, CAN YOU REMEMBER WHETHER OR NOT

02:50PM 8 THERE WERE ANY ERRORS THAT YOU EVER GOT FOR A PATIENT?

02:50PM 9 MR. SCHENK: OBJECTION. 401 AND 702.

02:50PM 10 THE COURT: SUSTAINED.

02:50PM 11 BY MR. COOPERSMITH:

02:50PM 12 Q. OKAY. SO, DR. WOOTEN, AT SOME POINT DID YOU HEAR ABOUT A

02:50PM 13 COMPANY CALLED THERANOS?

02:50PM 14 A. YES, I HAD.

02:50PM 15 Q. AND HOW DID YOU LEARN ABOUT THERANOS?

02:50PM 16 A. WHEN I FIRST HEARD ABOUT IT, A FEW REPS CAME INTO MY

02:50PM 17 OFFICE GIVING ME BROCHURES AND TELLING ME ABOUT THEIR LAB.

02:50PM 18 Q. OKAY. DO YOU KNOW WHEN THAT WAS?

02:50PM 19 A. I BELIEVE IT WAS IN 2014.

02:50PM 20 Q. OKAY. AND DID YOU IMMEDIATELY START SENDING PATIENTS TO

02:50PM 21 THERANOS?

02:50PM 22 A. I DID NOT.

02:50PM 23 Q. AT SOME POINT DID YOU START SENDING PATIENTS TO THERANOS?

02:50PM 24 A. I DID.

02:50PM 25 Q. AND WHEN WAS THAT?

02:51PM 1 A. PROBABLY 2015.

02:51PM 2 Q. AND DO YOU REMEMBER WHEN IN 2015?

02:51PM 3 A. I DON'T KNOW EXACTLY.

02:51PM 4 Q. OKAY. WHY DID YOU START USING THERANOS FOR SENDING

02:51PM 5 PATIENTS FOR LAB TESTS?

02:51PM 6 A. ANOTHER PATIENT CAME INTO MY OFFICE WITH LABS FROM

02:51PM 7 THERANOS WHICH TRIGGERED MY MEMORY ABOUT THERANOS. AND THEN I

02:51PM 8 LIKED THE SETUP OF THERANOS. THEY WERE AVAILABLE FOR MY

02:51PM 9 PATIENTS, THEY WERE EASILY ACCESSIBLE. SO I STARTED USING

02:51PM 10 THERANOS.

02:51PM 11 Q. OKAY. AND AT THE TIME, LET'S JUST SAY IN 2015, 2016

02:51PM 12 TIMEFRAME, CAN YOU TELL US APPROXIMATELY HOW MANY PATIENTS YOU

02:51PM 13 SENT TO THERANOS FOR LAB TESTING?

02:51PM 14 A. I BELIEVE I SENT OVER 150.

02:51PM 15 Q. AND WOULD EACH OF THOSE PATIENTS, AMONG THE APPROXIMATELY

02:51PM 16 150, GENERALLY HAVE HAD ONLY ONE LAB TEST OR MULTIPLE LAB

02:51PM 17 TESTS?

02:51PM 18 A. MULTIPLE.

02:52PM 19 Q. AND AT THE TIME THAT YOU WERE SENDING PATIENTS TO

02:52PM 20 THERANOS, WAS THAT THE ONLY LAB THAT YOU WERE SENDING PATIENTS

02:52PM 21 TO?

02:52PM 22 A. NO.

02:52PM 23 Q. AND HOW DID YOU DECIDE, OR HOW DID THE PATIENTS DECIDE, IF

02:52PM 24 YOU KNOW, WHICH LAB THE PATIENT SHOULD GO TO?

02:52PM 25 A. YEAH. SO I STILL USE SONORAQUEST IN MY PRACTICE. SO

02:52PM 1 DEPENDING ON THE TIME OF DAY AND THE SCHEDULING OF THE PATIENT,
02:52PM 2 SO IF THE PATIENT WAS COMING EARLY IN THE MORNING, I WOULD DO
02:52PM 3 SONORAQUEST. IF THEY COULDN'T DO BLOOD DRAW IN MY OFFICE THAT
02:52PM 4 DAY, I WOULD SEND THEM TO THERANOS.

02:52PM 5 Q. AT WHAT POINT, IF YOU CAN REMEMBER, DID YOU STOP SENDING
02:52PM 6 PATIENTS TO THERANOS?

02:52PM 7 A. 2016.

02:52PM 8 Q. AND DID YOU STOP BECAUSE OF ANY PROBLEM THAT AROSE AT
02:52PM 9 THERANOS?

02:52PM 10 MR. SCHENK: OBJECTION. RELEVANCE.

02:52PM 11 THE COURT: SUSTAINED.

02:52PM 12 BY MR. COOPERSMITH:

02:52PM 13 Q. AT SOME POINT WERE YOU STILL ABLE TO SEND LAB TESTS TO
02:52PM 14 THERANOS, PATIENTS TO THERANOS.

02:52PM 15 WAS THERE A TIME WHEN IT WAS NOT POSSIBLE FOR YOU TO SEND
02:52PM 16 PATIENTS TO THERANOS ANYMORE?

02:52PM 17 A. CORRECT.

02:53PM 18 Q. OKAY. DURING THE TIME, JUST AT A GENERAL LEVEL FOR
02:53PM 19 STARTERS, DURING THE TIME THAT YOU WERE SENDING PATIENTS TO
02:53PM 20 THERANOS, DO YOU RECALL ANYTHING OUT OF THE ORDINARY WITH THE
02:53PM 21 LAB TESTING THAT YOU WERE GETTING?

02:53PM 22 MR. SCHENK: OBJECTION. 702.

02:53PM 23 THE COURT: SUSTAINED.

02:53PM 24 MR. COOPERSMITH: YOUR HONOR, THIS IS JUST BASED ON
02:53PM 25 HER OWN OBSERVATIONS OF WHAT SHE OBSERVED IN HER PRACTICE.

02:53PM 1 THE COURT: YOU CAN TRY TO LAY A FOUNDATION IF YOU
02:53PM 2 WOULD LIKE.

02:53PM 3 MR. COOPERSMITH: OKAY. THANK YOU, YOUR HONOR.

02:53PM 4 Q. DR. WOOTEN, IN YOUR PRACTICE, DID YOU HAVE OCCASION TO
02:53PM 5 REVIEW THE BLOOD TESTS THAT CAME BACK FROM THE THERANOS LAB?

02:53PM 6 A. YES.

02:53PM 7 Q. AND DID YOU HAVE A CHANCE TO REVIEW THE BLOOD TEST THAT
02:53PM 8 CAME BACK FROM OTHER LABS LIKE SONORAQUEST?

02:53PM 9 A. YES.

02:53PM 10 Q. DID YOU REVIEW EACH AND EVERY LAB TEST THAT CAME BACK FROM
02:53PM 11 THOSE LABS?

02:53PM 12 A. YES.

02:53PM 13 Q. IS THAT PART OF YOUR JOB AS A NATUROPATHIC PHYSICIAN?

02:53PM 14 A. YES.

02:53PM 15 Q. AND IN THE COURSE OF REVIEWING THOSE, DID YOU HAVE
02:53PM 16 OCCASION TO COMPARE THE RESULTS FROM THE DIFFERENT THERANOS
02:53PM 17 TESTS THAT THE PATIENTS WERE GETTING OVER TIME?

02:53PM 18 A. YES.

02:53PM 19 Q. AND DID YOU HAVE A CHANCE TO COMPARE THE THERANOS LAB
02:54PM 20 TESTS THAT YOU WERE RECEIVING WITH THE LAB TESTS FROM OTHER
02:54PM 21 LABS SUCH AS SONORAQUEST?

02:54PM 22 A. YES.

02:54PM 23 Q. AND BASED ON THAT COMPARISON, WERE YOU ABLE TO FORM ANY
02:54PM 24 OBSERVATION ABOUT WHETHER THE LAB TESTS APPEARED TO MATCH OR
02:54PM 25 NOT MATCH?

02:54PM 1 MR. SCHENK: OBJECTION. 702. CALLS FOR AN EXPERT
02:54PM 2 OPINION.

02:54PM 3 THE COURT: SUSTAINED. SUSTAINED.

02:54PM 4 MR. COOPERSMITH: YOUR HONOR, JUST FOR THE RECORD,
02:54PM 5 I'M NOT ASKING FOR AN EXPERT OPINION, I'M JUST ASKING WHAT SHE
02:54PM 6 OBSERVED ON THE PAPER THAT CAME BACK TO HER.

02:54PM 7 I'M NOT ASKING HER TO INTERPRET ANYTHING. IT'S SIMPLY
02:54PM 8 WHAT SHE OBSERVED ON THE PAGE.

02:54PM 9 THE COURT: SUSTAINED.

02:54PM 10 MR. COOPERSMITH: OKAY.

02:54PM 11 Q. DR. WOOTEN, DID YOU YOURSELF AT SOME POINT HAVE YOUR OWN
02:54PM 12 BLOOD TESTED AT THERANOS?

02:54PM 13 A. YES.

02:54PM 14 Q. AND WHEN YOU DID THAT? DO YOU REMEMBER WHAT TYPE OF BLOOD
02:54PM 15 DRAW IT WAS?

02:54PM 16 A. YES.

02:54PM 17 Q. AND WHAT DO YOU REMEMBER ABOUT THAT?

02:54PM 18 A. WHICH LAB DID I DRAW MYSELF?

02:54PM 19 Q. YES.

02:54PM 20 A. I DID AN HCG.

02:54PM 21 Q. OKAY. BUT WHAT TYPE OF DRAW WAS IT? WAS IT A VEIN --

02:55PM 22 A. OH. IT WAS A VENOUS.

02:55PM 23 Q. A VENOUS DRAW?

02:55PM 24 A. IT WAS.

02:55PM 25 Q. FOR THE OTHER PATIENTS, OTHER THAN YOURSELF, DO YOU

02:55PM 1 REMEMBER WHETHER THIS WAS A VEIN DRAW OR A FINGERSTICK?

02:55PM 2 A. IT WAS A VENOUS.

02:55PM 3 Q. FOR ALL OF THE OTHER PATIENTS?

02:55PM 4 A. OH, I'M NOT SURE.

02:55PM 5 Q. OKAY. SO JUST TO BE CLEAR, FOR -- OTHER THAN YOURSELF,

02:55PM 6 FOR ALL OF THE OTHER PATIENTS THAT YOU SENT TO THERANOS FOR

02:55PM 7 YOUR LAB TESTS, DO YOU KNOW ONE WAY OR THE OTHER WHETHER THEY

02:55PM 8 GOT FINGERSTICK TESTING, BLOOD FROM THE FINGER, OR A DRAW FROM

02:55PM 9 THE ARM?

02:55PM 10 A. NO.

02:55PM 11 Q. YOU DON'T KNOW EITHER WAY?

02:55PM 12 A. I DON'T KNOW EITHER WAY.

02:55PM 13 Q. DID YOU CARE?

02:55PM 14 A. NO, I DID NOT.

02:55PM 15 Q. WHY DIDN'T YOU CARE?

02:55PM 16 A. IT WASN'T IMPORTANT TO ME. I WAS JUST LOOKING FOR THE LAB

02:55PM 17 RESULTS.

02:55PM 18 Q. OKAY. LET'S GO BACK TO YOUR OWN TESTING.

02:55PM 19 A. YES.

02:55PM 20 Q. AND WE'LL GET TO HCG IN A MINUTE.

02:55PM 21 BUT DID YOU TEST YOUR OWN -- DID YOU HAVE TESTS AT

02:55PM 22 THERANOS FOR YOURSELF OTHER THAN HCG?

02:56PM 23 A. YES.

02:56PM 24 Q. AND WHAT TYPES OF TESTS WERE THOSE?

02:56PM 25 A. I DID A REGULAR CHEM PANEL, A CBC PANEL, A THYROID PANEL,

02:56PM 1 A LIPID PANEL.

02:56PM 2 Q. ARE THOSE COMMONLY ORDERED TESTS?

02:56PM 3 A. YES.

02:56PM 4 Q. AND ARE THOSE SIMILAR TO THE TESTS THAT YOU WOULD ORDER

02:56PM 5 FOR YOUR OTHER PATIENTS?

02:56PM 6 A. CORRECT.

02:56PM 7 Q. AND BY THE WAY, JUST GOING BACK TO THE OTHER PATIENTS FOR

02:56PM 8 A MINUTE, DID YOU MAKE TREATMENT DECISIONS BASED ON THE LAB

02:56PM 9 RESULTS THAT YOU WERE GETTING FROM THERANOS?

02:56PM 10 A. YES.

02:56PM 11 Q. AND DID YOU BELIEVE YOU HAD A SOUND BASIS TO MAKE THOSE

02:56PM 12 TREATMENT DECISIONS?

02:56PM 13 MR. SCHENK: OBJECTION. 702.

02:56PM 14 THE COURT: SUSTAINED.

02:56PM 15 BY MR. COOPERSMITH:

02:56PM 16 Q. DR. WOOTEN, WHEN YOU MADE TREATMENT DECISIONS FOR YOUR

02:56PM 17 PATIENTS, WERE THERE -- WAS THERE --

02:56PM 18 WELL, LET ME JUST MOVE ON, YOUR HONOR.

02:56PM 19 SO, DR. WOOTEN, LET'S GO BACK TO YOUR OWN TESTING.

02:56PM 20 A. YES.

02:56PM 21 Q. SO THE COMMON -- THE TESTS THAT YOU DESCRIBED THAT YOU

02:56PM 22 TOOK, WERE THOSE COMMONLY ORDERED TESTS?

02:57PM 23 A. YES.

02:57PM 24 Q. WHEN YOU TOOK THOSE COMMONLY ORDERED TESTS, DID YOU JUST

02:57PM 25 TAKE ONE TEST AT THERANOS OR WERE THERE MULTIPLE TESTS OVER

02:57PM 1 TIME?

02:57PM 2 A. I DON'T RECALL EXACTLY, BUT I REMEMBER THERE WAS THREE TO

02:57PM 3 FOUR.

02:57PM 4 Q. SO OVER TIME, DO YOU REMEMBER TAKING THREE TO FOUR

02:57PM 5 DIFFERENT BLOOD TESTS FOR YOURSELF?

02:57PM 6 A. CORRECT.

02:57PM 7 Q. OKAY. AND THOSE WERE ALL AT THERANOS?

02:57PM 8 A. YES.

02:57PM 9 Q. AND THE THREE DIFFERENT BLOOD TESTS THAT YOU TOOK AT

02:57PM 10 THERANOS, DID YOU GET RESULTS FROM THERANOS FOR YOUR OWN BLOOD

02:57PM 11 TESTS?

02:57PM 12 A. YES.

02:57PM 13 Q. OKAY. AND DID YOU LOOK AT THE NUMBERS ON THE PAGE THAT

02:57PM 14 CAME BACK FOR THE TEST RESULTS?

02:57PM 15 A. YES.

02:57PM 16 Q. AND DID YOU LOOK AT THE NUMBERS ON THE PAGE LOOKING AT ONE

02:57PM 17 SET OF RESULTS, VERSUS ANOTHER SET OF RESULTS, VERSUS THE THIRD

02:57PM 18 AND FOURTH SET OF RESULTS?

02:57PM 19 A. YES.

02:57PM 20 MR. SCHENK: OBJECTION. VAGUE.

02:57PM 21 THE COURT: YOU KNOW, COULD YOU BE A LITTLE MORE

02:58PM 22 SPECIFIC WITH THAT QUESTION.

02:58PM 23 MR. COOPERSMITH: SURE, YOUR HONOR.

02:58PM 24 THE COURT: WHY DON'T YOU ASK ANOTHER QUESTION. IF

02:58PM 25 THERE WAS AN ANSWER, THE ANSWER IS STRICKEN. YOU CAN ASK

02:58PM 1 ANOTHER QUESTION.

02:58PM 2 MR. COOPERSMITH: SURE.

02:58PM 3 Q. SO, DR. WOOTEN, WHEN YOU GOT THE LAB RESULTS BACK FROM
02:58PM 4 THERANOS -- WELL, FIRST OF ALL, DID YOU GET TEST RESULTS BACK
02:58PM 5 FROM THERANOS?

02:58PM 6 A. I DID.

02:58PM 7 THE COURT: THIS IS REGARDING THE WITNESS'S TEST?

02:58PM 8 MR. COOPERSMITH: I'M SORRY?

02:58PM 9 THE COURT: THE WITNESS'S TEST?

02:58PM 10 MR. COOPERSMITH: FOR HER OWN TEST.

02:58PM 11 THE COURT: OKAY. THANK YOU.

02:58PM 12 BY MR. COOPERSMITH:

02:58PM 13 Q. AND WHEN YOU GOT THE TEST RESULTS BACK, WHAT DID THE PAGE
02:58PM 14 LOOK LIKE GENERALLY?

02:58PM 15 A. IT WOULD BE A LIST OF ALL OF THE TESTS THAT I ORDERED WITH
02:58PM 16 THE RESULTS.

02:58PM 17 Q. OKAY. AND ARE THE RESULTS EXPRESSED IN A NUMERICAL FORM?

02:58PM 18 A. YES.

02:58PM 19 Q. THERE'S A NUMBER?

02:58PM 20 A. THERE'S A NUMBER.

02:58PM 21 Q. OKAY. AND DID YOU, FOR THE SECOND TEST AND THE THIRD TEST
02:58PM 22 AND SO FORTH, DID YOU -- WERE THOSE TESTS ALSO LIKE THAT WHERE
02:58PM 23 THEY HAD NUMBERS NEXT TO THE PARTICULAR TESTS THAT WERE TAKEN?

02:58PM 24 A. CORRECT.

02:58PM 25 Q. OKAY. AND DID YOU EVER LOOK AT THE NUMBERS FROM THE

02:58PM 1 DIFFERENT TESTS AND COMPARE THEM TO ONE ANOTHER?

02:59PM 2 MR. SCHENK: OBJECTION. 702.

02:59PM 3 THE COURT: WELL, SHE CAN ANSWER THAT QUESTION YES

02:59PM 4 OR NO.

02:59PM 5 THE WITNESS: YES.

02:59PM 6 BY MR. COOPERSMITH:

02:59PM 7 Q. OKAY. AND WHAT WAS THAT COMPARISON?

02:59PM 8 I MEAN, IT IS JUST HER OWN TESTS, YOUR HONOR, THE NUMBERS

02:59PM 9 ON THE PAGE THAT SHE'S OBSERVING WITH HER OWN EYES.

02:59PM 10 MR. SCHENK: OBJECTION. 702.

02:59PM 11 THE COURT: I THINK IT IS, YES. SO SUSTAINED.

02:59PM 12 PARDON ME.

02:59PM 13 MR. COOPERSMITH: OKAY. YOUR HONOR, COULD I HAVE A

02:59PM 14 MOMENT?

02:59PM 15 THE COURT: OF COURSE.

02:59PM 16 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

03:00PM 17 MR. COOPERSMITH: YOUR HONOR, COULD WE HAVE A BRIEF

03:00PM 18 SIDE-BAR?

03:00PM 19 THE COURT: SURE. OKAY.

03:00PM 20 YOU AND -- WHO WOULD LIKE TO JOIN?

03:00PM 21 MR. SCHENK?

03:00PM 22 MR. SCHENK: YES.

03:00PM 23 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO GO

03:00PM 24 IN THE BACK ROOM FOR JUST A MOMENT. EVERYONE ELSE COULD STAY

03:00PM 25 HERE IN THE COURTROOM.

03:00PM 1 WHILE WE'RE GONE, LADIES AND GENTLEMEN, DO NOT DISCUSS
03:00PM 2 AMONGST YOURSELVES ANYTHING ABOUT THIS CASE AND FORM ANY
03:00PM 3 OPINION ABOUT IT.

03:00PM 4 WE'LL BRING OUR COURT REPORTER BACK.

03:00PM 5 (SIDE-BAR CONFERENCE ON THE RECORD.)

03:25PM 6 THE COURT: OKAY. WE ARE OUTSIDE OF THE PRESENCE OF
03:25PM 7 THE JURY IN THE DELIBERATION ROOM THAT IS NOT BEING USED.

03:25PM 8 COUNSEL ARE PRESENT.

03:25PM 9 MR. COOPERSMITH.

03:25PM 10 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

03:25PM 11 WE OBVIOUSLY TRY TO KEEP THESE SIDE-BARS TO A MINIMUM, SO
03:25PM 12 I APPRECIATE THE COURT'S TIME.

03:25PM 13 THE COURT: SURE. NO, I UNDERSTAND.

03:25PM 14 MR. COOPERSMITH: SO, FIRST OF ALL, WITH REGARD TO
03:25PM 15 HER REMEMBERING RESULTS AND SAYING I THOUGHT THESE WERE SIMILAR
03:25PM 16 OR NOT SIMILAR, I THINK THIS IS VERY -- ALMOST IDENTICAL TO THE
03:25PM 17 TESTIMONY THAT THE GOVERNMENT OFFERED FROM PATIENT
03:25PM 18 BRENT BINGHAM WHO TESTIFIED THAT THERE WAS NO PHYSICIAN. AND
03:25PM 19 HE OBVIOUSLY WASN'T AN EXPERT. HE WAS A GENTLEMAN WHO HAD A
03:25PM 20 MEDICAL CONDITION THAT REQUIRED HIM TO TAKE A LOT OF PLATELET
03:25PM 21 COUNT TESTS, AND HE TALKED ABOUT HIS LEVELS AND HOW THOSE
03:25PM 22 CORRELATED, AND HOW IN MOST OF THE CASES, EXCEPT I THINK FOR
03:25PM 23 ONE, HE DIDN'T HAVE ANY LAB RESULTS.

03:25PM 24 HE JUST SAID THAT THEY DIDN'T SEEM RIGHT GIVEN HOW HE
03:25PM 25 FELT. OBVIOUSLY THERE WAS NO QUESTION OF EXPERT TESTIMONY.

03:25PM 1 SO I THINK IT'S SIMILAR TO THAT.

03:25PM 2 AND THEN I ALSO WANT TO POINT OUT, YOUR HONOR, THAT

03:25PM 3 DR. ROSENDORFF TESTIFIED ABOUT ALL MATTERS OF TECHNICAL

03:25PM 4 SUBJECTS, AND HE WAS NOT QUALIFIED AS AN EXPERT EITHER.

03:25PM 5 HE IS A DOCTOR, AND DR. WOOTEN IS A NATUROPATHIC DOCTOR.

03:25PM 6 SO I DON'T REALLY SEE HOW THESE QUESTIONS ABOUT HER JUST

03:25PM 7 OBSERVATION -- I'M NOT ASKING HER TO INTERPRET ANYTHING. I'M

03:25PM 8 NOT ASKING HER TO INTERPRET, YOU KNOW, WHAT CREATINE IS AND

03:25PM 9 WHAT LEVELS ARE APPROPRIATE AND NOT APPROPRIATE.

03:25PM 10 I'M JUST ASKING HER TO SAY, EVEN WITH HER OWN TESTS, MY

03:25PM 11 RESULTS OVER SEVERAL DIFFERENT LAB TESTS WITH THERANOS WERE

03:25PM 12 CONSISTENT OR NOT CONSISTENT, WHATEVER SHE CHOOSES TO TESTIFY.

03:25PM 13 AND THEN WITH --

03:25PM 14 THE COURT: WHAT DOES THAT MEAN "CONSISTENT"?

03:25PM 15 MR. COOPERSMITH: IN OTHER WORDS, LIKE, I TOOK A

03:25PM 16 TEST AT THERANOS AND WHATEVER THE ASSAY WAS, LET'S SAY IT WAS

03:25PM 17 CHOLESTEROL, AND THEN SHE TAKES ANOTHER TEST AT THERANOS A FEW

03:25PM 18 MONTHS LATER, AND SHE RECALLS THEM BEING CONSISTENT, LIKE THE

03:25PM 19 NUMBERS WERE THE SAME NUMBER OR VERY SIMILAR NUMBERS, RIGHT?

03:25PM 20 OR THE SAME WOULD BE TRUE FOR A PATIENT EVEN IF IT WASN'T
03:25PM 21 HERSELF.

03:25PM 22 SO I'M NOT ASKING, YOU KNOW, COULD YOU TELL ME MORE ABOUT
03:25PM 23 WHAT THAT MEANS.

03:25PM 24 I'M JUST ASKING HER IS THAT THE EXPERIENCE THAT YOU HAD?

03:25PM 25 SO I DON'T THINK THAT IS EXPERT TESTIMONY. I THINK IT'S

03:25PM 1 JUST OBSERVATION. AND I THINK THE COURT IS FAMILIAR WITH THE
03:25PM 2 SUBJECT. WE'VE HAD EXTENSIVE BRIEFING ON THE LINE OF EXPERT
03:25PM 3 TESTIMONY AND NOT EXPERT TESTIMONY.

03:25PM 4 THE OTHER THING I WANTED TO SAY, YOUR HONOR, IS THAT THIS
03:25PM 5 CASE HAS BEEN ABOUT THERANOS, THE GOVERNMENT'S PRESENTATION
03:25PM 6 THAT THERANOS IS JUST A LAB THAT IS NOT CAPABLE OF PRODUCING
03:25PM 7 RESULTS THAT YOU CAN TRUST.

03:25PM 8 AND I THINK IT SHOULD BE THE CASE THAT SHE HAS HAD, AND
03:25PM 9 SHE WILL TESTIFY, I BELIEVE, THAT THERE ARE OTHER LABS, SUCH AS
03:25PM 10 SONORAQUEST, WHERE SHE HAD SOME BAD EXPERIENCES.

03:25PM 11 DR. BURNES TALKED ABOUT THAT. HE HAD A BAD EXPERIENCE
03:25PM 12 WITH LABCORP.

03:25PM 13 I DON'T THINK THAT'S EXPERT TESTIMONY. THAT'S NOT 401 OR
03:25PM 14 403.

03:25PM 15 I THINK IT'S CORE TO THE DEFENSE THAT EVERY LABORATORY
03:25PM 16 MAKES ERRORS. AND THIS IS A WITNESS FROM HER OWN PERSONAL
03:25PM 17 OBSERVATION CAN SAY I GOT LABS BACK FROM SONORAQUEST THAT JUST
03:25PM 18 WEREN'T RIGHT.

03:25PM 19 AND SHE'S IN A REALLY GREAT POSITION TO DO THAT BECAUSE
03:25PM 20 SHE ORDERED SO MANY BLOOD TESTS, AND SHE CAN DO THAT
03:25PM 21 COMPARISON.

03:25PM 22 SO WE ARE NOT SURE -- I MEAN, THE GOVERNMENT CAN MAKE
03:25PM 23 THEIR OBJECTIONS, BUT WE DON'T THINK THAT THEY'RE WELL TAKEN.

03:25PM 24 THE COURT: OKAY.

03:25PM 25 MR. COOPERSMITH: AND THEN THE LAST THING I WOULD

03:25PM 1 SAY, IS THAT WE CAN QUALIFY HER AS AN EXPERT.

03:25PM 2 THE COURT: HAS SHE BEEN LISTED?

03:25PM 3 MR. COOPERSMITH: I'M GOING TO SAY NO.

03:25PM 4 BUT WE WEREN'T ANTICIPATING THIS TYPE OF OBJECTION, WHICH
03:25PM 5 WE THINK IS REALLY NOT APPROPRIATE.

03:25PM 6 THE COURT: OKAY.

03:25PM 7 MR. SCHENK: THANK YOU.

03:25PM 8 I'LL ADDRESS A COUPLE OF THE POINTS THAT MR. COOPERSMITH
03:25PM 9 MADE AND ALLOW MR. BOSTIC TO ADDRESS THE PARTICULAR STATEMENTS
03:25PM 10 ABOUT PATIENT BRENT BINGHAM.

03:25PM 11 FIRST, ON THIS IDEA THAT NOW THEY'RE GOING TO QUALIFY THIS
03:25PM 12 INDIVIDUAL AS AN EXPERT. I DON'T KNOW HOW THEY GET LEAVE OF
03:25PM 13 COURT TO MAKE SUCH A LATE DISCLOSURE AT THIS POINT.

03:25PM 14 THEY SAT THROUGH THE ELIZABETH HOLMES TRIAL.

03:25PM 15 THIS IS NOT A CASE WHERE THEY WERE SURPRISED BY NEARLY ANY
03:25PM 16 WITNESS THAT TESTIFIED.

03:25PM 17 SO THE IDEA THAT NOT ONLY THROUGHOUT THE COURSE OF OUR
03:25PM 18 TRIAL, THE BALWANI TRIAL THEY DIDN'T BECOME AWARE OF THE NEED
03:25PM 19 TO QUALIFY THIS INDIVIDUAL AS AN EXPERT, BUT STARTING LAST
03:25PM 20 AUGUST WHEN THEY SAT THROUGH A TRIAL WHERE MANY OF THE SAME
03:25PM 21 WITNESSES TESTIFIED CONSISTENTLY SUGGESTS THAT THEY SHOULD HAVE
03:25PM 22 TO MAKE A PARTICULAR SHOWING TO THE COURT FOR WHY THEY SHOULD
03:25PM 23 BE EXCUSED FROM THE RULES REGARDING EXPERT DISCLOSURES.

03:25PM 24 THEY MET PRIOR OBLIGATIONS. THEY MADE EXPERT DISCLOSURES
03:25PM 25 TO US THAT WERE TIMELY. THEY CHOSE NOT TO DISCLOSE THIS

03:25PM 1 INDIVIDUAL.

03:25PM 2 WE DO HAVE QUESTIONS, SHOULD IT GET THERE, ABOUT HER
03:25PM 3 QUALIFICATIONS TO TESTIFY AS AN EXPERT. BUT THAT'S THE CART
03:25PM 4 BEFORE THE HORSE. THE COURT SHOULD NOT ALLOW A LATE DISCLOSURE
03:25PM 5 ON THIS ISSUE.

03:25PM 6 MR. COOPERSMITH RAISED A COUPLE OF POINTS THAT I WILL
03:25PM 7 RESPOND TO. THE FIRST OF THE SUBSTANTIVE POINTS WAS PROBLEMS
03:25PM 8 AT QUEST OR OTHER LABS SHOULD COME IN THROUGH THIS WITNESS
03:25PM 9 BECAUSE THEY'RE RELEVANT.

03:25PM 10 IT SIMPLY IS NOT TRUE. THEY DON'T MEET THE 401 TEST, AND
03:25PM 11 THROUGH THIS WITNESS IT'S 403. BECAUSE IF SHE'S NOT AN EXPERT,
03:25PM 12 THERE'S NO EXPLANATION, THERE'S NO TESTIMONY ABOUT THE BASIS
03:25PM 13 FOR THE DIFFERENCES.

03:25PM 14 ALL SHE SAYS FROM -- WITHOUT PROVIDING ANY EXPERT
03:25PM 15 TESTIMONY IS I GOT A SEVEN FROM QUEST AND I GOT A THREE FROM
03:25PM 16 THERANOS.

03:25PM 17 AND IF THERE'S NO EXPERT TESTIMONY, THERE'S NO ANALYSIS
03:25PM 18 THAT IS PROVIDED, AND, THEREFORE, IT ISN'T 401 AND IT ALSO IS
03:25PM 19 403, NO COMPARISON ABOUT THE FAILURES AND HER OPINION OF QUEST
03:25PM 20 IS ADMISSIBLE ABSENT SOME DISCLOSURE THAT WASN'T MADE, A
03:25PM 21 QUALIFICATION THAT SHE WOULDN'T MEET.

03:25PM 22 MR. COOPERSMITH ALSO SUGGESTED THAT SOMEHOW IT'S RELEVANT
03:25PM 23 FOR HER TO TESTIFY THAT EITHER ON HER OWN, OR ON ANOTHER
03:25PM 24 PATIENT'S TEST, ONE MONTH THE CHOLESTEROL SCORE WAS X AND THREE
03:25PM 25 MONTHS LATER THE CHOLESTEROL SCORE WAS ALSO X, AND THAT'S

03:25PM 1 RELEVANT OF ANYTHING, AND THAT DOES NOT PROVE THAT THERANOS IS
03:25PM 2 CAPABLE OF GENERATING ACCURATE RESULTS. IT MIGHT BE CAPABLE OF
03:25PM 3 GENERATING CONSISTENT RESULTS, BUT THAT DOESN'T SAY ANYTHING
03:25PM 4 ABOUT ACCURACY.

03:25PM 5 AND TO SUGGEST BECAUSE TWO NUMBERS WERE THE SAME DOESN'T
03:25PM 6 SAY ANYTHING. IT DOESN'T ASSIST THIS THE JURY AT ALL TO SAY A
03:25PM 7 TEST SEVERAL MONTHS LATER WAS JUST LIKE A TEST TODAY.

03:25PM 8 IT WOULD REQUIRE HER TO SAY AND I ATE THE SAME FOOD AND MY
03:25PM 9 LIFESTYLE WAS SIMILAR OR HERE ARE ALL OF THE REASONS WHY A
03:25PM 10 SECOND TEST THAT MIRRORED THE FIRST TEST HELPED ME BELIEVE THAT
03:25PM 11 I COULD TRUST THERANOS. IT REQUIRED THAT TESTIMONY IN ORDER TO
03:25PM 12 MAKE JUST TWO NUMBERS RELEVANT.

03:25PM 13 IT REQUIRES SOME FURTHER EXPLANATION. THAT ALSO IS
03:25PM 14 PROPERLY EXCLUDED AT THIS POINT.

03:25PM 15 I'M GOING TO ALLOW MR. BOSTIC TO ADDRESS THE BRENT BINGHAM
03:25PM 16 ISSUE.

03:25PM 17 MR. BOSTIC: THANK YOU, YOUR HONOR. I'LL ADDRESS
03:25PM 18 BRIEFLY THE POINTS MR. COOPERSMITH MADE ABOUT BRENT BINGHAM AND
03:25PM 19 ADAM ROSENDORFF.

03:25PM 20 WHEN IT CAME TO BRENT BINGHAM, PIVOTALLY, THERE WAS NO
03:25PM 21 JUDGMENT OR OPINION DELIVERED BY MR. BINGHAM. WE WERE NEVER
03:25PM 22 ASKING THE JURY TO RELY ON HIS ULTIMATE OPINION AS TO WHETHER A
03:25PM 23 TEST RESULT WAS ACCURATE OR NOT.

03:25PM 24 IN THAT CASE THERE WAS ONE INSTANCE WHERE HE HAD PARALLEL
03:25PM 25 TESTING DONE BY THERANOS AT A CONVENTIONAL LAB. THOSE RESULTS

03:25PM 1 CAME IN, BUT HE DIDN'T MAKE ANY JUDGMENT AS TO WHETHER THOSE
03:25PM 2 TWO WERE CONSISTENT, I THINK WAS THE TERM THAT MR. COOPERSMITH
03:25PM 3 JUST USED.

03:25PM 4 THAT KIND OF TESTIMONY COMING FROM A DOCTOR WOULD BE
03:25PM 5 ESPECIALLY PROBLEMATIC AND CROSS INTO 702 LAND BECAUSE THEN WE
03:25PM 6 WOULD BE ASKED TO RELY ON THAT DOCTOR'S MEDICAL JUDGMENT IN
03:25PM 7 TERMS OF WHAT IS CONSISTENT VERSUS INCONSISTENT.

03:25PM 8 WITH MR. BINGHAM, HE WAS TESTIFYING ABOUT HIS EXPERIENCE
03:25PM 9 OF HOW THE NUMBERS THAT HE WOULD GET BACK FROM LABS MATCHED UP
03:25PM 10 OR DID NOT MATCH UP WITH HIS ACTUAL SYMPTOMS THAT HE COULD
03:25PM 11 EXPERIENCE AND THAT HE WAS IN THE ONLY POSITION TO TESTIFY
03:25PM 12 ABOUT. SO THAT IS A DIFFERENT KIND OF TESTIMONY FROM THE
03:25PM 13 TESTIMONY THAT IS BEING OFFERED NOW.

03:25PM 14 THE COURT: LET ME STOP YOU THERE. THAT WAS
03:25PM 15 SOMETHING THAT I THINK WE ALL HEARD.

03:25PM 16 MR. BINGHAM WAS NOT AN EXPERT, BUT HE WAS -- HE COULD
03:25PM 17 TESTIFY ABOUT AND HE TOLD US ABOUT HIS CONDITION, HIS HISTORY
03:25PM 18 OF LIVING WITH THE CONDITION, AND HIS PERSONAL KNOWLEDGE OF HOW
03:25PM 19 HE FEELS BASED ON ELEVATIONS AND INCREASES.

03:25PM 20 HIS OPINION ABOUT THE LABS WAS BASED ON HIM RECEIVING
03:25PM 21 TESTING -- AS I RECALL, AND PLEASE HELP ME IF YOU HAVE A
03:25PM 22 DIFFERENT MEMORY, OF RECEIVING TEST RESULTS THAT DID NOT
03:25PM 23 CORRELATE WITH HIS PHYSICAL SYMPTOMS.

03:25PM 24 AND SO I SUPPOSE I DON'T WANT TO CALL HIM AN EXPERT OF HIS
03:25PM 25 OWN FEELINGS, BUT THAT'S IN ESSENCE WHAT HE WAS SAYING, I KNOW

03:25PM 1 WHEN I FEEL THIS WAY, MY NUMBERS ARE GOING TO BE HERE. I FELT
03:25PM 2 THIS WAY, I SAW THE NUMBERS, THOSE DID NOT CORRELATE.

03:25PM 3 THAT'S DIFFERENT, THOUGH. I THINK ASKING THIS WITNESS TO
03:25PM 4 TESTIFY ABOUT THE NUMBERS AND WHAT THEY MEAN WHEN SHE DOESN'T
03:25PM 5 HAVE THE SAME TYPE OF MR. BINGHAM REFERENCE POINT, HER
03:25PM 6 REFERENCE POINT IS GOING TO BE THEN EXPERT OR OTHERWISE SPECIAL
03:25PM 7 TESTIMONY THAT I THINK WOULD REQUIRE THAT. THAT'S WHY I
03:25PM 8 SUSTAINED THE 702 OBJECTION.

03:25PM 9 MR. COOPERSMITH: OKAY. THANK YOU, YOUR HONOR.
03:25PM 10 THAT'S HELPFUL.

03:25PM 11 SO, FIRST OF ALL, WITH MR. BINGHAM, YOUR HONOR IS RIGHT
03:25PM 12 THAT I THINK HE HAD FOUR TESTS. FOR SOME OF THE TESTS HE TOOK
03:25PM 13 AT THERANOS, HE WAS ABLE TO SAY THAT IT WASN'T CONSISTENT WITH
03:25PM 14 HOW I KNOW I USUALLY FEEL AT A CERTAIN LEVEL OF PLT, RIGHT? HE
03:25PM 15 DID SAY THAT. AND I SUPPOSE HE KNOWS HOW HE FEELS, RIGHT?

03:25PM 16 OF COURSE, FOR HIM TO SAY THIS CORRELATES OR DOESN'T
03:25PM 17 CORRELATE WITH A CERTAIN LEVEL OF PLT DOESN'T SEEM TO GET INTO
03:25PM 18 THAT 702 AREA.

03:25PM 19 BUT MORE TO THE POINT, YOUR HONOR, THERE WAS, AS
03:25PM 20 MR. BOSTIC SAID, THERE WAS THIS ONE TEST WHERE HE HAD HAVE
03:25PM 21 PARTICULAR RESULTS, AND THERE WAS A PARTICULAR TEST WHERE HE
03:25PM 22 GOT THE THERANOS TEST AND IT WAS AROUND 1100 FOR HIS PLT, AND
03:25PM 23 HE GOT ANOTHER TEST FROM A DIFFERENT LAB AND I THINK HE
03:25PM 24 DELIBERATELY GOT THE COMPARISON.

03:25PM 25 THE COURT: SAME DAY.

03:25PM 1 MR. COOPERSMITH: WITHIN AN HOW ARE OR SO, AND THAT
03:25PM 2 RESULT CAME BACK AT AROUND 700.

03:25PM 3 AND HE TESTIFIED THAT -- THAT CAME INTO EVIDENCE. AND HE
03:25PM 4 SAID, WELL, THAT'S THE PROBLEM, RIGHT, IT'S DIFFERENT, RIGHT?

03:25PM 5 SO I THINK THAT'S SIMILAR, REALLY ALMOST IDENTICAL, IN OUR
03:25PM 6 VIEW, TO WHAT WE'RE TRYING TO HAVE DR. WOOTEN TESTIFY TO.

03:25PM 7 THE COURT: WELL, THE DIFFERENCE IS, THOUGH, ISN'T
03:25PM 8 IT, IS THAT THE REFERENCE POINT OF HIS REFERENCE POINT WAS HIS
03:25PM 9 OWN PERSONAL KNOWLEDGE ABOUT THAT'S HIS EXPERTISE, IF YOU WILL,
03:25PM 10 I KNEW THESE -- THERE WAS SOMETHING WRONG WITH THAT.

03:25PM 11 AND TO HAVE HER ANSWER THIS QUESTION IS GOING TO CALL UPON
03:25PM 12 HER ANALYSIS, ISN'T IT? SHE'S NOT MR. BINGHAM -- SHE'S NOT
03:25PM 13 TESTIFYING ABOUT HER OWN PERSONAL PHYSICAL CHARACTERISTICS AND
03:25PM 14 COMPARING IT WITH TESTS THAT WAY.

03:25PM 15 MR. COOPERSMITH: RIGHT.

03:25PM 16 THE COURT: SO I THINK THERE'S A DIFFERENCE. OR
03:25PM 17 HELP ME WITH THAT.

03:25PM 18 MR. COOPERSMITH: I THINK THERE'S A DIFFERENCE. I'M
03:25PM 19 NOT SURE IT'S A LEGALLY MEANINGFUL DIFFERENCE.

03:25PM 20 BUT HERE'S ONE THING THAT I THINK, YOU KNOW, MR. SCHENK
03:25PM 21 ADDRESSED, WELL, WE DIDN'T NOTICE THE EXPERT.

03:25PM 22 WHAT WE RELIED ON IS WHEN WE HAD OUR MIL'S BACK IN THE
03:25PM 23 FALL, WE HAD FILED MIL'S WITH RESPECT TO DR. DAS, WHO WE
03:25PM 24 THOUGHT WAS GOING TO TESTIFY, AND HE ENDED UP NOT BEING CALLED.

03:25PM 25 BUT WE HAD HIGHLIGHTED CERTAIN TESTIMONY FROM THE

03:25PM 1 ELIZABETH HOLMES'S CASE AND WE SAID, WELL, IF THEY WERE TO ASK
03:25PM 2 THESE SAME QUESTIONS, WE THINK IT WOULD BE EXPERT OPINION IN
03:25PM 3 THE WAY THAT HE TESTIFIED.

03:25PM 4 AND THE COURT, I BELIEVE, ULTIMATELY DEFERRED ON RULING ON
03:25PM 5 THOSE QUESTIONS, BUT I DO REMEMBER --

03:25PM 6 THE COURT: FOR DR. DAS?

03:25PM 7 MR. COOPERSMITH: YEAH. AND IF I'M WRONG, I'M SURE
03:25PM 8 SOMEONE WILL TELL ME.

03:25PM 9 BUT WHAT I RECALL ABOUT THAT RULING, WAS THAT THE COURT
03:25PM 10 FELT THAT IF THE DOCTOR WAS SIMPLY TESTIFYING ABOUT WHAT HE
03:25PM 11 OBSERVED IN THE COURSE OF HIS DUTIES AND WORK, JUST LIKE
03:25PM 12 DR. ROSENDORFF WAS, LIKE, TALKING ABOUT WHAT HE OBSERVED IN THE
03:25PM 13 COURSE OF HIS WORK, THEN THAT WOULD BE APPROPRIATE AS NONEXPERT
03:25PM 14 TESTIMONY, AND THAT'S WHAT DR. WOOTEN IS DOING OR TRYING TO DO.

03:25PM 15 THE COURT: I THINK IT'S DIFFERENT, THOUGH. I THINK
03:25PM 16 THAT THOSE, THOSE DOCTORS WORKED AT THERANOS, AND THEY HAD
03:25PM 17 INTIMACY WITH THERANOS, AND THEIR OBSERVATIONS ARE A LITTLE
03:25PM 18 DIFFERENT. I DON'T THINK THEY'RE THE SAME.

03:25PM 19 MR. COOPERSMITH: I SEE WHAT YOU'RE SAYING,
03:25PM 20 YOUR HONOR.

03:25PM 21 BUT SHE WORKS AT WOOTEN NATUROPATHIC MEDICINE; RIGHT?
03:25PM 22 THAT'S HER BUSINESS.

03:25PM 23 THE COURT: SURE.

03:25PM 24 BUT IF SHE CAN TESTIFY LIKE MR. BINGHAM DID ABOUT HER OWN
03:25PM 25 RESULTS, WE'RE IN BINGHAM FIELD, IF YOU'LL PARDON ME. I

03:25PM 1 INTERRUPTED YOU.

03:25PM 2 MR. COOPERSMITH: IF I COULD SAY ONE MORE THING?

03:25PM 3 AND I'M SORRY. I DON'T MEAN TO INTERRUPT MR. BOSTIC.

03:25PM 4 BUT JUST BY WAY OF PROFFER, THERE IS ADDITIONAL TESTIMONY,
03:25PM 5 WHICH IS WHAT I BELIEVE SHE'LL SAY IS HER OWN EXPERIENCE WITH
03:25PM 6 HCG TESTING. AND THIS IS VERY SIMILAR TO BRITTANY GOULD,
03:25PM 7 RIGHT?

03:25PM 8 SHE'S GOING TO SAY SHE WANTED TO KNOW IF SHE WAS PREGNANT,
03:25PM 9 AND SHE TOOK AN HCG TEST AT THERANOS. AND THEN SHE KNOWS,
03:25PM 10 BECAUSE IT'S IMPORTANT TO SEE IF IT DOUBLES, SHE KNOWS THAT
03:25PM 11 FROM HER EXPERIENCE, SO SHE GOES AND TAKES ANOTHER THERANOS
03:25PM 12 TEST, AND THAT'S TWO TESTS, AND SHE SEES IT'S DOUBLED AND THEN
03:25PM 13 SHE WAS PREGNANT AND HAD A SUCCESSFUL DELIVERY OF HER BABY.

03:25PM 14 THE COURT: SO YOU WANT TO ASK DID YOU GET AN HCG
03:25PM 15 TEST AT THERANOS?

03:25PM 16 YES.

03:25PM 17 AND WHAT DID IT SAY? PREGNANT? NOT PREGNANT?

03:25PM 18 MR. COOPERSMITH: WELL, IT WOULD HAVE A VALUE.

03:25PM 19 THE COURT: A NUMBER?

03:25PM 20 MR. COOPERSMITH: YEAH.

03:25PM 21 THE COURT: AND DID THAT HELP YOU ASSESS WHETHER OR
03:25PM 22 NOT YOU WERE PREGNANT OR YOU THOUGHT YOU WERE PREGNANT?

03:25PM 23 MR. COOPERSMITH: RIGHT.

03:25PM 24 THE COURT: AND THEN ULTIMATELY DID YOU DELIVER A
03:25PM 25 HEALTHY CHILD?

03:25PM 1 MR. COOPERSMITH: EXACTLY, YOUR HONOR, WITH ONE
03:25PM 2 EXTRA LITTLE PIECE.

03:25PM 3 SO SHE TAKES AN HCG AT THERANOS, IT HAS A VALUE, WHICH
03:25PM 4 INDICATES PREGNANCY, AND THEN SHE TAKES ANOTHER TEST.

03:25PM 5 AND AS THE COURT REMEMBERS FROM THE OTHER WITNESSES, SHE
03:25PM 6 RECALLS THE VALUE DOUBLING, WHICH INDICATES A VIABLE PREGNANCY,
03:25PM 7 THEN SHE GOES FORWARD WITH GETTING OBGYN CARE.

03:25PM 8 THE COURT: DO YOU WANT TO SPEAK TO THAT?

03:25PM 9 MR. SCHENK: YOUR HONOR, THAT FACT THAT THE HCG
03:25PM 10 VALUE SHOULD DOUBLE, WAS QUALIFIED EXPERT TESTIMONY FROM
03:25PM 11 DR. ZACHMAN.

03:25PM 12 THE COURT: RIGHT.

03:25PM 13 MR. SCHENK: WE WILL OBJECT. OUR PLAN WOULD BE TO
03:25PM 14 OBJECT.

03:25PM 15 THE COURT: THAT'S HOW THAT CAME IN.

03:25PM 16 MR. COOPERSMITH: THAT'S ALREADY IN THE RECORD. THE
03:25PM 17 GOVERNMENT HAS ESTABLISHED WHAT THE HCG SHOULD LOOK LIKE. I
03:25PM 18 JUST WANT TO ASK HER DID IT DOUBLE. I WON'T ASK HER IS THAT
03:25PM 19 INDICATIVE OF ANYTHING. I DON'T NEED TO GET INTO WHAT DOUBLING
03:25PM 20 MEANS.

03:25PM 21 IT'S KIND OF INTERESTING, THE GOVERNMENT ALREADY ELICITED
03:25PM 22 THAT TESTIMONY FROM DR. ZACHMAN, AND I THINK EVERYONE IN THE
03:25PM 23 COURTROOM KNOWS THAT.

03:25PM 24 THE COURT: SO IF YOU WANT TO ASK HER DID YOU --
03:25PM 25 WERE YOU CURIOUS ABOUT WHETHER YOU WERE PREGNANT OR NOT? AND

03:25PM 1 YOU WENT TO THERANOS, YOU GOT TESTING, THE TESTING SUGGESTED TO
03:25PM 2 YOU THAT YOU WERE. AND DID YOU DELIVER, DID YOU DELIVER A
03:25PM 3 HEALTHY CHILD?

03:25PM 4 YES.

03:25PM 5 YOU CAN ASK HER THOSE QUESTIONS.

03:25PM 6 MR. COOPERSMITH: OKAY. OKAY. THAT'S HELPFUL.
03:25PM 7 THANK YOU.

03:25PM 8 THE OTHER THING I THINK TO ASK HER IN GENERAL, ALL OF THE
03:25PM 9 TIME THAT SHE WAS SENDING PATIENTS TO THERANOS, DID SHE EVER
03:25PM 10 HAVE A BAD EXPERIENCE, I THINK --

03:25PM 11 THE COURT: IS THE QUESTION WERE YOU COMFORTABLE
03:25PM 12 SENDING YOUR PATIENTS THERE?

03:25PM 13 MR. COOPERSMITH: WERE YOU COMFORTABLE SENDING YOUR
03:25PM 14 PATIENTS THERE? AND DO YOU KEEP ON DOING THAT; RIGHT?

03:25PM 15 MR. SCHENK: I HAVE NO OBJECTION TO WERE YOU
03:25PM 16 COMFORTABLE SENDING YOUR PATIENTS TO THERANOS.

03:25PM 17 THE COURT: AND SHE DID IT.

03:25PM 18 MR. COOPERSMITH: SHE KEPT ON DOING IT.

03:25PM 19 THE COURT: YES, THAT'S FINE.

03:25PM 20 MR. BOSTIC.

03:25PM 21 MR. BOSTIC: THAT'S DIFFERENT FROM THE FIRST
03:25PM 22 QUESTION THAT MR. COOPERSMITH PROFFERED, DID YOU EVER HAVE A
03:25PM 23 BAD EXPERIENCE?

03:25PM 24 WHEN YOU ASK A DOCTOR, DID YOU EVER HAVE A BAD EXPERIENCE,
03:25PM 25 ONE INTERPRETATION OF THAT IS DID YOU EVER GET AN INACCURATE

03:25PM 1 TEST RESULT BACK WHEN THE GOVERNMENT'S WITNESSES TESTIFIED
03:25PM 2 ABOUT INACCURATE RESULTS, AND THAT WAS NOTICED EXPERT
03:25PM 3 TESTIMONY, THIS IS JUST THE INVERSE OF THAT, DID THAT EVER
03:25PM 4 HAPPEN?

03:25PM 5 FOR HER TO SAY NO, IS THE SAME KIND OF TESTIMONY THAT THE
03:25PM 6 GOVERNMENT'S EXPERTS PROVIDED AFTER BEING NOTICED AS EXPERTS.

03:25PM 7 THE COURT: SURE.

03:25PM 8 MR. BOSTIC: BRIEFLY ON THE COMPARISON WITH THE
03:25PM 9 DOCTORS WHO ACTUALLY WORKED AT THERANOS.

03:25PM 10 DRS. ROSENDORFF AND DAS, I THINK THE COURT HIT ON THAT
03:25PM 11 DISTINCTION. THE KEY DIFFERENCE IS THEY WERE ON THE INSIDE
03:25PM 12 SEEING HOW THE COMPANY WAS HANDLING THESE PROBLEMS AND WHAT THE
03:25PM 13 COMPANY WAS AWARE OF COLLECTIVELY.

03:25PM 14 DR. ROSENDORFF ESPECIALLY RAISED CONCERNS TO THIS
03:25PM 15 DEFENDANT AND ULTIMATELY QUIT HIS JOB BECAUSE OF THE PROBLEMS
03:25PM 16 THAT HE WAS SEEING.

03:25PM 17 SO HIS TESTIMONY ABOUT ISSUES THAT HE SAW WITH TEST
03:25PM 18 RESULTS WAS DIRECTLY RELEVANT TO THE ISSUES IN THIS CASE
03:25PM 19 BECAUSE THEY WENT TO THE ACTIONS THAT HE TOOK AND DIRECTLY TO
03:25PM 20 THIS DEFENDANT'S NOTICE AND INTENT.

03:25PM 21 THE SAME CAN'T BE SAID FOR ANYTHING THAT THIS WITNESS IS
03:25PM 22 OFFERING.

03:25PM 23 THE COURT: I THINK THAT'S THE DISTINCTION, I CALL
03:25PM 24 IT THE INTIMACY, BUT, YOU KNOW, THEY WORKED THERE.

03:25PM 25 MR. COOPERSMITH: I DON'T THINK THAT'S -- WELL, I

03:25PM 1 UNDERSTAND THE DISTINCTION. I DON'T THINK THAT'S THE REASON,
03:25PM 2 FROM MY RECOLLECTION OF THE COURT'S RULING, WHY THAT TESTIMONY
03:25PM 3 WAS ALLOWED.

03:25PM 4 THE COURT: WELL, I'M SORRY TO INTERRUPT YOU.

03:25PM 5 MR. COOPERSMITH: SURE.

03:25PM 6 THE COURT: THAT INTIMACY, THAT CONNECTION, THAT
03:25PM 7 EXPERIENCE, THIS WITNESS DOES NOT HAVE FOR WHATEVER IT IS.

03:25PM 8 MR. COOPERSMITH: YES, THAT IS TRUE.

03:25PM 9 THE COURT: THAT'S WHY I'M NOT GOING TO PERMIT HER
03:25PM 10 TO TESTIFY CONCURRENT WITH THEIR TESTIMONY UNDER THAT THEORY.

03:25PM 11 MR. COOPERSMITH: OKAY. I UNDERSTAND.

03:25PM 12 WHAT SHE IS INTIMATELY FAMILIAR WITH IS NOT INSIDE
03:25PM 13 THERANOS, SHE WASN'T THERE, BUT SHE'S FAMILIAR WITH A LOT OF
03:25PM 14 THERANOS LAB RESULTS THAT SHE'S SEEING OVER AND OVER AGAIN.
03:25PM 15 THAT'S WHAT SEES INTIMATELY FAMILIAR WITH.

03:25PM 16 THE COURT: AND YOU CAN ASK HER, WERE YOU
03:25PM 17 COMFORTABLE -- WAS IT 500 TESTS? I CAN'T REMEMBER.

03:25PM 18 WERE YOU COMFORTABLE SENDING YOUR PATIENTS THERE? AND SHE
03:25PM 19 WILL TELL US.

03:25PM 20 MR. COOPERSMITH: OKAY. THANK YOU, YOUR HONOR.

03:25PM 21 ONE LAST THING ON THE DOUBLING OF THE HCG ISSUE.

03:25PM 22 I RECALL THAT BRITTANY GOULD TESTIFIED THAT HCG IS
03:25PM 23 SUPPOSED TO DOUBLE.

03:25PM 24 THE COURT: SHE HAD TRAINING.

03:25PM 25 MR. COOPERSMITH: SHE WAS A NONMEDICAL EXPERT. SHE

03:25PM 1 HAS TRAINING HERSELF AS THIS WITNESS HAD.

03:25PM 2 THE COURT: I'M TRYING TO REMEMBER IF MS. GOULD --

03:25PM 3 AND WHAT WAS THE SOURCE OF HER INFORMATION AND DID SHE TESTIFY

03:25PM 4 TO DOUBLING. I THINK SHE DID.

03:25PM 5 MR. BOSTIC: I THINK, YOUR HONOR, SHE HAS WORKED IN

03:25PM 6 MEDICAL OFFICES BEFORE, BUT SHE DIDN'T TESTIFY AS AN EXPERT

03:25PM 7 WITNESS.

03:25PM 8 THE COURT: RIGHT, RIGHT.

03:25PM 9 MR. BOSTIC: HER TESTIMONY FOLLOWED THAT OF

03:25PM 10 DR. ZACHMAN WHO BROUGHT IN THAT FACT.

03:25PM 11 HER KNOWLEDGE OF HOW HCG WAS SUPPOSED TO WORK CAME FROM

03:25PM 12 HER KNOWLEDGE AS A PATIENT IS MY RECOLLECTION.

03:25PM 13 MR. COOPERSMITH: RIGHT.

03:25PM 14 MR. SCHENK: THERE WAS NO OBJECTION.

03:25PM 15 THE COURT: THAT'S TRUE, THERE WASN'T.

03:25PM 16 MR. COOPERSMITH: WELL, YOU KNOW, YES. SO NOW WE'RE

03:25PM 17 INTO ANGELS ON THE HEAD OF THE PIN.

03:25PM 18 THERE IS ACTUALLY TESTIMONY IN THE RECORD THAT HCG IS

03:25PM 19 SUPPOSED TO DOUBLE, SO I'M NOT SURE WHY THIS IS SUCH A VERBOTEN

03:25PM 20 SUBJECT AT THIS POINT, BUT OKAY.

03:25PM 21 THE COURT: SO WERE YOU COMFORTABLE CONTINUING TO

03:25PM 22 SEND YOUR PATIENTS TO THERANOS FOR TEST? YES, NO, WHATEVER

03:25PM 23 SHE'LL SAY.

03:25PM 24 YOU WANT TO THEN ASK HER, WAS THERE A TIME WHEN YOU WERE

03:25PM 25 SEEKING TO CONCEIVE, OR HOWEVER DELICATELY YOU WANT TO ASK THAT

03:25PM 1 QUESTION, I'M NOT SURE.

03:25PM 2 AND SHE'LL SAY YES.

03:25PM 3 WHAT DID YOU DO?

03:25PM 4 I WENT TO GET HCG TESTING. OKAY.

03:25PM 5 WHERE DID YOU GO?

03:25PM 6 THERANOS.

03:25PM 7 YOU GOT YOUR RESULT.

03:25PM 8 DID YOU GO BACK?

03:25PM 9 YES.

03:25PM 10 AND YOU WANT TO ASK THE NUMBER, WHAT WAS THE VALUE, OR DO

03:25PM 11 YOU WANT TO ASK HER DID THAT VALUE DOUBLE IN YOUR SECOND TEST?

03:25PM 12 MR. COOPERSMITH: I THINK I WOULD ASK HER IF THE

03:25PM 13 FIRST TEST SHE GOT AT THERANOS, LIKE, PRODUCED A VALUE, AND

03:25PM 14 WHETHER THAT VALUE WAS CONSISTENT WITH PREGNANCY.

03:25PM 15 AND SHE'LL SAY, YES, I THINK.

03:25PM 16 AND THEN I'LL ASK IF SHE GOT ANOTHER TEST. AND I'LL SAY,

03:25PM 17 DID THAT VALUE TELL YOU ANYTHING?

03:25PM 18 AND SHE'LL SAY THAT THAT VALUE TOLD ME THERE WAS A VIABLE

03:25PM 19 PREGNANCY AND THEN I WENT TO SEE AN OBGYN.

03:25PM 20 MR. SCHENK: THAT IS EXPERT. THE FIRST QUESTION, IS

03:25PM 21 THE NUMBER CONSISTENT WITH PREGNANCY, AND THE SECOND QUESTION,

03:25PM 22 IS IT VIABLE, WERE THE EXACT QUESTIONS THAT ZACHMAN TESTIFIED

03:25PM 23 TO.

03:25PM 24 THE COURT: IF YOU COULD ASK THAT SUCH THAT IT

03:25PM 25 DOESN'T CALL FOR EXPERT TESTIMONY.

03:25PM 1 MR. COOPERSMITH: I THINK I CAN.

03:25PM 2 THE COURT: I THINK YOU CAN TOO.

03:25PM 3 MR. COOPERSMITH: DID YOU TAKE A TEST? DID YOU GET
03:25PM 4 A VALUE? AND DID YOU TAKE ANOTHER TEST? DID YOU GET A VALUE
03:25PM 5 AND DID YOU GO SEE AN OB.

03:25PM 6 THE COURT: ABSOLUTELY. SHE WENT TO THERANOS, SHE
03:25PM 7 GOT A TEST. SHE WENT TO THERANOS, SHE GOT A TEST. IT TOLD HER
03:25PM 8 SOMETHING, AND IT ULTIMATELY CAME TO FRUITION.

03:25PM 9 MR. COOPERSMITH: RIGHT. IF I COULD REMEMBER THOSE
03:25PM 10 QUESTIONS, THEN I WILL ENDEAVOR.

03:25PM 11 YOUR HONOR, JUST SO I UNDERSTAND THE COURT'S GUIDANCE,
03:25PM 12 WHAT I WAS PLANNING TO ASK HER, AND I THOUGHT THERE WAS NO
03:25PM 13 OBJECTION TO THIS, BUT I COULD BE CORRECTED, IS THAT I'LL ASK
03:25PM 14 HER IF SHE EVER HAD A BAD EXPERIENCE WITH SENDING PATIENTS TO
03:25PM 15 THERANOS, AND I THINK SHE'LL SAY NO.

03:25PM 16 THE COURT: NO. I WOULD -- THERE WAS AN OBJECTION
03:25PM 17 TO THAT, AND I DON'T KNOW IF YOU OBJECTED YET TO THAT QUESTION.
03:25PM 18 MAYBE YOU HADN'T.

03:25PM 19 MR. SCHENK: YES, THAT IS AN OBJECTIONABLE QUESTION.

03:25PM 20 THE COURT: WHAT YOU SAID WAS THAT YOU CONTINUE TO
03:25PM 21 SEND PATIENTS THERE DURING YOUR PRACTICE. WERE YOU COMFORTABLE
03:25PM 22 DOING SO, CONTINUING?

03:25PM 23 MR. COOPERSMITH: OKAY.

03:25PM 24 THE COURT: AND HOW MANY YEARS WAS THAT? AND WHEN
03:25PM 25 YOU CONTINUED, AND CONTINUING, AND CONTINUING.

03:25PM 1 YOU CAN DO THAT IN 9, 10, 11 -- I DON'T KNOW HOW MANY IT
03:25PM 2 WAS.

03:25PM 3 MR. COOPERSMITH: I DON'T HAVE ANYTHING ELSE,
03:25PM 4 YOUR HONOR.

03:25PM 5 THE COURT: OKAY.

03:25PM 6 MR. SCHENK: NOTHING FURTHER.

03:25PM 7 THE COURT: GREAT.

03:25PM 8 DO YOU THINK WE'LL FINISH BY 4:00 TODAY?

03:25PM 9 MR. COOPERSMITH: I DON'T HAVE -- BASED ON THIS, I
03:25PM 10 DON'T HAVE THAT MUCH MORE.

03:25PM 11 THE COURT: RIGHT.

03:25PM 12 MR. COOPERSMITH: SO I GUESS THAT'S UP TO THE
03:25PM 13 GOVERNMENT.

03:25PM 14 THE COURT: OKAY. THANK YOU.

03:25PM 15 MR. SCHENK: THANK YOU.

03:25PM 16 (END OF DISCUSSION AT SIDE-BAR.)

03:26PM 17 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

03:26PM 18 ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

03:26PM 19 THANK YOU FOR YOUR PATIENCE, LADIES AND GENTLEMEN.

03:26PM 20 MR. COOPERSMITH.

03:26PM 21 MR. COOPERSMITH: YES. THANK YOU.

03:26PM 22 Q. DR. WOOTEN, I'M JUST GOING TO ASK YOU SOME MORE QUESTIONS.

03:26PM 23 A. YEAH.

03:26PM 24 Q. SO, FIRST OF ALL, DO YOU KNOW WHEN PATIENTS THAT YOU HAD
03:26PM 25 WENT TO THERANOS FOR THEIR LAB TESTS, DO YOU KNOW WHERE THEY

03:26PM 1 WENT TO GET THOSE TESTS?

03:26PM 2 A. WHAT LOCATION?

03:26PM 3 Q. YEAH, OR JUST IN GENERAL WHERE THEY WOULD GO?

03:26PM 4 A. YES.

03:26PM 5 THE COURT: MR. COOPERSMITH, COULD YOU SPEAK IN THE
03:26PM 6 MIKE?

03:26PM 7 MR. COOPERSMITH: YES, OF COURSE.

03:26PM 8 THE COURT: THAT WOULD BE HELPFUL.

03:26PM 9 BY MR. COOPERSMITH:

03:26PM 10 Q. SO LET ME ASK THE QUESTION AGAIN, DR. WOOTEN.

03:27PM 11 WHEN YOUR PATIENTS, AS WE DISCUSSED EARLIER, WENT TO
03:27PM 12 THERANOS TO GET THEIR BLOOD TESTS, DO YOU KNOW WHERE THEY WENT
03:27PM 13 TO GET THEIR BLOOD DRAWN?

03:27PM 14 A. THEY WENT TO THE WALGREENS LOCATION.

03:27PM 15 Q. AND WERE THERE WALGREENS LOCATIONS NEAR YOUR OFFICE?

03:27PM 16 A. THERE WERE WALGREENS NEAR THEIR HOME OR WORK.

03:27PM 17 Q. OKAY. AND DID YOUR PATIENTS, JUST IN GENERAL AT A HIGH
03:27PM 18 LEVEL, GENERALLY LIKE TO GO TO THERANOS?

03:27PM 19 A. YES, THEY DID.

03:27PM 20 Q. FOR ABOUT HOW LONG -- I THINK YOU SAID THAT YOU STARTED
03:27PM 21 USING THERANOS IN 2015?

03:27PM 22 A. YES.

03:27PM 23 Q. AND THEN THAT PRACTICE OF SENDING PATIENTS TO THERANOS
03:27PM 24 ENDED SOME TIME IN 2016; IS THAT RIGHT?

03:27PM 25 A. CORRECT.

03:27PM 1 Q. AND WERE YOU COMFORTABLE SENDING PATIENTS THERE FOR THAT
03:27PM 2 TIME PERIOD?
03:27PM 3 A. VERY COMFORTABLE.
03:27PM 4 Q. AND YOU CONTINUED TO SEND PATIENTS TO THERANOS DURING THAT
03:28PM 5 WHOLE PERIOD OF TIME?
03:28PM 6 A. CORRECT.
03:28PM 7 Q. AND ABOUT HOW MANY PATIENTS WAS THAT?
03:28PM 8 A. OVER 150.
03:28PM 9 Q. OKAY. LET'S GO BACK TO HCG TESTING FOR A MINUTE.
03:28PM 10 A. YES.
03:28PM 11 Q. OKAY. IN -- WAS THERE A TIME WHEN YOU TOOK AN HCG TEST
03:28PM 12 THROUGH THERANOS?
03:28PM 13 A. YES.
03:28PM 14 Q. AND WHERE DID YOU GO TO GET THAT TEST?
03:28PM 15 A. I WENT TO A WALGREENS LOCATION.
03:28PM 16 Q. OKAY. AND WHY DID YOU WANT TO GET A THERANOS TEST FOR
03:28PM 17 HCG?
03:28PM 18 A. I WANTED TO CONFIRM MY RESULTS.
03:28PM 19 Q. OKAY. CONFIRM YOUR RESULTS FOR WHAT?
03:28PM 20 A. FROM A URINE TEST THAT I TOOK.
03:28PM 21 Q. FOR WHAT CONDITION?
03:28PM 22 A. FOR PREGNANCY. I'M SORRY.
03:28PM 23 Q. OKAY. SO DID YOU TAKE AN HCG TEST AT THERANOS?
03:28PM 24 A. YES, I DID.
03:28PM 25 Q. OKAY. AND DID YOU GET A RESULT FOR THAT?

03:28PM 1 A. YES, I DID.

03:28PM 2 Q. AND DID YOU REVIEW THE RESULT?

03:28PM 3 A. I DID.

03:28PM 4 Q. DID YOU THEN AT ANY POINT AFTER THAT TAKE ANOTHER HCG TEST

03:29PM 5 AT THERANOS?

03:29PM 6 A. I DID.

03:29PM 7 Q. AND DID YOU GET A RESULT FOR THAT?

03:29PM 8 A. I DID.

03:29PM 9 Q. DID YOU REVIEW THAT RESULT?

03:29PM 10 A. I DID.

03:29PM 11 Q. AND DID YOU COMPARE THAT RESULT TO THE FIRST RESULT?

03:29PM 12 A. I DID.

03:29PM 13 Q. AND WHAT DID YOU DO AFTER THAT SECOND RESULT?

03:29PM 14 A. WHAT DID I DO?

03:29PM 15 Q. YEAH.

03:29PM 16 A. I CALLED AN OB TO MAKE AN APPOINTMENT.

03:29PM 17 Q. WHEN YOU SAY "OB," AN OBSTETRICIAN GYNECOLOGIST?

03:29PM 18 A. CORRECT.

03:29PM 19 Q. AND WERE YOU PREGNANT?

03:29PM 20 A. YES, I WAS.

03:29PM 21 Q. AND DID YOU ACTUALLY HAVE A CHILD?

03:29PM 22 A. I DID.

03:29PM 23 Q. HOW OLD IS THAT CHILD TODAY?

03:29PM 24 A. FIVE AND A HALF.

03:29PM 25 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

03:29PM 1 THE COURT: CROSS-EXAMINATION?

03:29PM 2 MR. SCHENK: YES. THANK YOU.

03:30PM 3 YOUR HONOR, MAY I APPROACH?

03:30PM 4 THE COURT: YES.

03:30PM 5 MR. SCHENK: (HANDING.)

03:30PM 6 **CROSS-EXAMINATION**

03:30PM 7 BY MR. SCHENK:

03:30PM 8 Q. GOOD AFTERNOON, DR. WOOTEN.

03:30PM 9 A. GOOD AFTERNOON.

03:30PM 10 Q. MY NAME IS JEFF SCHENK, AND I REPRESENT THE UNITED STATES
03:30PM 11 IN THIS MATTER. IT'S NICE TO MEET YOU.

03:30PM 12 A. NICE TO MEET YOU.

03:30PM 13 Q. I'D LIKE TO START BY ASKING YOU ABOUT A VIEW THAT YOU JUST
03:31PM 14 EXPRESSED ON DIRECT, AND, THAT IS, THAT YOU WERE COMFORTABLE
03:31PM 15 SENDING PATIENTS OF YOURS TO THERANOS, TO THE LOCATIONS WITHIN
03:31PM 16 WALGREENS STORES IN THE PHOENIX AREA TO GET BLOOD TESTING.

03:31PM 17 IS THAT ACCURATE?

03:31PM 18 A. CORRECT.

03:31PM 19 Q. AND THAT WAS ABOUT IN THE -- I THINK YOU SAID 2015 AND
03:31PM 20 2016 TIMEFRAME?

03:31PM 21 A. CORRECT.

03:31PM 22 Q. ABOUT 150 PATIENTS OF YOURS IN TOTAL; IS THAT RIGHT?

03:31PM 23 A. CORRECT.

03:31PM 24 Q. SO I WANT TO COME BACK TO THAT IN JUST A MOMENT, BUT I
03:31PM 25 WANT TO SPEND A MOMENT TO TALK TO YOU ABOUT HOW YOU PREPARED TO

03:31PM 1 TESTIFY TODAY?

03:31PM 2 A. YES.

03:31PM 3 Q. BEFORE YOU COMING, DID YOU MEET WITH THE DEFENSE TO TALK

03:31PM 4 ABOUT YOUR TESTIMONY?

03:31PM 5 A. I DID.

03:31PM 6 Q. WAS THAT IN PERSON, OR WAS THAT ON SKYPE OR FACEBOOK OR

03:31PM 7 SOMETHING?

03:31PM 8 A. BOTH.

03:31PM 9 Q. BOTH?

03:31PM 10 A. UH-HUH.

03:31PM 11 Q. DID YOU SEE DOCUMENTS? DID THEY GIVE YOU ANYTHING TO

03:31PM 12 REVIEW IN ADVANCE OF TESTIMONY?

03:31PM 13 A. NO.

03:31PM 14 Q. DID YOU TAKE NOTES? DID YOU WRITE DOWN?

03:32PM 15 A. NO.

03:32PM 16 Q. DID THEY TELL YOU NOT TO TAKE NOTES OR THAT'S NOT YOUR

03:32PM 17 PRACTICE?

03:32PM 18 A. THAT'S NOT MY PRACTICE.

03:32PM 19 Q. OKAY. HOW ABOUT THEN, DID YOU NOTICE WHETHER PEOPLE ON

03:32PM 20 THE DEFENSE SIDE WERE TAKING NOTES? DO YOU RECALL?

03:32PM 21 A. I DON'T RECALL.

03:32PM 22 Q. AND I THINK YOU SAID THEY DIDN'T SHOW YOU DOCUMENTS; IS

03:32PM 23 THAT RIGHT?

03:32PM 24 A. CORRECT.

03:32PM 25 Q. OKAY. SO I WANT TO GO THROUGH SOME DOCUMENTS WITH YOU.

03:32PM 1 AND ESSENTIALLY WHAT I'M WONDERING IS NOW SEEING THESE
03:32PM 2 DOCUMENTS, BECAUSE IT SOUNDS LIKE YOU MAY NOT HAVE SEEN THEM
03:32PM 3 BEFORE, WHETHER IT AFFECTS THAT VIEW, IF YOU WOULD CHANGE YOUR
03:32PM 4 VIEW ABOUT WHETHER YOU WERE COMFORTABLE SENDING PATIENTS TO
03:32PM 5 THERANOS.

03:32PM 6 I'VE HANDED YOU A BINDER OF DOCUMENTS JUST A MOMENT AGO,
03:32PM 7 AND I WONDER IF YOU'LL TURN TO THE FIRST TAB IN THE BINDER,
03:32PM 8 IT'S TAB 1049.

03:32PM 9 A. OKAY.

03:32PM 10 MR. SCHENK: YOUR HONOR, PERMISSION TO PUBLISH 1049?
03:32PM 11 THAT HAS BEEN PREVIOUSLY ADMITTED.

03:32PM 12 THE COURT: YES.

03:32PM 13 (GOVERNMENT'S EXHIBIT 1049 WAS RECEIVED IN EVIDENCE.)

03:33PM 14 THE COURT: WE HAVE TO -- WE LOST OUR DIRECTOR.
03:33PM 15 SHE'LL BE RIGHT BACK.

03:33PM 16 (LAUGHTER.)

03:33PM 17 BY MR. SCHENK:

03:33PM 18 Q. SO NOW THERE'S A DOCUMENT ON THE SCREEN IN FRONT OF YOU.
03:33PM 19 YOU ALSO HAVE A PAPER COPY, SO PLEASE USE WHATEVER IS EASIER
03:33PM 20 FOR YOU.

03:33PM 21 A. OKAY.

03:33PM 22 Q. THERE'S AN EMAIL ON THE MIDDLE OF THE PAGE FROM
03:33PM 23 ADAM ROSENDORFF TO ELIZABETH HOLMES, AND THERE'S A SUBJECT,
03:33PM 24 CONCERNS ABOUT THE LAUNCH.

03:33PM 25 DO YOU SEE THAT?

03:33PM 1 A. I DO.

03:33PM 2 Q. AND YOU SAID YOU PREPARED FOR TESTIMONY TODAY BY MEETING

03:34PM 3 WITH INDIVIDUALS FROM THE DEFENSE TEAM.

03:34PM 4 WAS THE INDIVIDUAL WHO WAS JUST ASKING YOU QUESTIONS,

03:34PM 5 MR. COOPERSMITH, WAS HE ONE OF THE PEOPLE THAT YOU MET WITH?

03:34PM 6 A. YES.

03:34PM 7 Q. SO WHEN YOU WERE PREPARING TO TESTIFY, DID MR. COOPERSMITH

03:34PM 8 TELL YOU THAT DR. ADAM ROSENDORFF WAS THERANOS'S LAB DIRECTOR

03:34PM 9 IN 2013?

03:34PM 10 A. NO.

03:34PM 11 Q. DID MR. COOPERSMITH TELL YOU THAT DR. ROSENDORFF SENT AN

03:34PM 12 EMAIL JUST BEFORE THE LAUNCH WITH WALGREENS EXPRESSING THESE

03:34PM 13 MEDICAL AND OPERATIONAL CONCERNS?

03:34PM 14 MR. COOPERSMITH: OBJECTION, YOUR HONOR. 401. IT'S

03:34PM 15 NOT RELEVANT.

03:34PM 16 THE COURT: MR. SCHENK.

03:34PM 17 MR. SCHENK: SHE TESTIFIED SHE WAS COMFORTABLE

03:34PM 18 SENDING PATIENTS TO THERANOS, AND I'M JUST WONDERING WHETHER

03:34PM 19 ANY OF THIS WOULD CHANGE HER OPINION ABOUT WHETHER SHE WAS

03:34PM 20 COMFORTABLE SENDING PATIENTS TO THERANOS.

03:34PM 21 MR. COOPERSMITH: YOUR HONOR, THE EMAIL HE'S SHOWING

03:34PM 22 HER IS FROM 2013. SHE HAS NO TESTIMONY ABOUT THAT TIME PERIOD,

03:34PM 23 AND I DON'T THINK THIS IS RELEVANT TO HER TESTIMONY.

03:34PM 24 THE COURT: IF YOU HAVE SOMETHING THAT IS CLOSER IN

03:34PM 25 TIME TO THIS.

03:35PM 1 MR. SCHENK: YOUR HONOR, IF I MAY?

03:35PM 2 THE COURT: YES.

03:35PM 3 MR. SCHENK: I THINK THAT'S THE POINT, THIS WAS
03:35PM 4 AVAILABLE INFORMATION. IT DIDN'T POST DATE THE TIME THAT SHE
03:35PM 5 WAS SENDING PATIENTS TO THERANOS.

03:35PM 6 IT WAS INFORMATION THAT THERANOS HAD SENT -- IF THIS WAS
03:35PM 7 INFORMATION THAT THERANOS WAS SHARING WITH INDIVIDUALS LIKE
03:35PM 8 DR. WOOTEN, IT MIGHT HAVE AFFECTED HER DECISION TO SEND
03:35PM 9 PATIENTS. IT ALSO MIGHT HAVE AFFECTED HER DECISION TO TESTIFY.
03:35PM 10 SHE JUST EXPRESSED AN OPINION.

03:36PM 11 (PAUSE IN PROCEEDINGS.)

03:36PM 12 THE COURT: SO YOU'RE ASKING HAD SHE KNOWN THIS
03:36PM 13 INFORMATION, WOULD IT AFFECT HER OPINION, --

03:36PM 14 MR. SCHENK: PRECISELY.

03:36PM 15 THE COURT: -- HER COMFORT LEVEL?

03:36PM 16 MR. SCHENK: PRECISELY.

03:36PM 17 MR. COOPERSMITH: YOUR HONOR, I DON'T SEE HOW
03:36PM 18 SOMETHING THAT DR. ROSENDORFF SAYS IN 2013 HAS ANY BEARING TO
03:36PM 19 DR. WOOTEN'S EXPERIENCE BEING COMFORTABLE WITH SENDING HER
03:36PM 20 PATIENTS IN 2015 AND 2016.

03:36PM 21 IT JUST SEEMS APPLES AND ORANGES HERE, AND I DON'T THINK
03:36PM 22 IT'S RELEVANT.

03:36PM 23 THE COURT: WELL, MR. SCHENK, I'LL ALLOW YOU TO ASK
03:36PM 24 QUESTIONS ABOUT WHETHER OR NOT SHE WAS INFORMED OF THIS
03:36PM 25 INFORMATION AND WHAT EFFECT THAT HAD, IF ANY.

03:36PM 1 SO I'LL OVERRULE THE OBJECTION FOR THIS QUESTION. SO YOU
03:36PM 2 CAN START OVER.

03:36PM 3 MR. SCHENK: THANK YOU.

03:36PM 4 Q. DR. WOOTEN, DO YOU SEE HERE AN EMAIL FROM SOMEONE NAMED
03:37PM 5 DR. ADAM ROSENDORFF?

03:37PM 6 A. YES.

03:37PM 7 Q. SENT IN 2013?

03:37PM 8 A. YES.

03:37PM 9 Q. AND THE SUBJECT IS ABOUT CONCERNS ABOUT THE LAUNCH, THE
03:37PM 10 SUBJECT LINE?

03:37PM 11 A. YES.

03:37PM 12 Q. AND MY FIRST QUESTION IS WHEN PREPARING TO TESTIFY TODAY,
03:37PM 13 DID MR. COOPERSMITH SHOW YOU THIS EMAIL?

03:37PM 14 A. NO.

03:37PM 15 Q. AND I'M WONDERING IF NOW, SEEING THIS EMAIL WHERE THE LAB
03:37PM 16 DIRECTOR IS EXPRESSING MEDICAL AND OPERATIONAL CONCERNS ABOUT
03:37PM 17 THERANOS'S READINESS FOR LAUNCH, WHETHER IF YOU HAD KNOWN THAT
03:37PM 18 WHEN DECIDING TO SEND YOUR PATIENTS TO THERANOS, TO THE
03:37PM 19 WALGREENS LOCATIONS, WOULD THAT HAVE AFFECTED YOUR OPINION
03:37PM 20 ABOUT WHETHER YOU WOULD SEND YOUR PATIENTS TO A THERANOS INSIDE
03:37PM 21 OF A WALGREENS STORE?

03:37PM 22 A. IT MAY HAVE BACK IN 2013.

03:37PM 23 Q. I'M SORRY?

03:37PM 24 A. IT MAY HAVE BACK IN 2013.

03:37PM 25 Q. AND IF WE CAN NOW ZOOM OUT OF THE EMAIL AND LOOK UP AT THE

03:37PM 1 TOP OF IT.

03:37PM 2 DO YOU SEE THAT THIS EMAIL GETS FORWARDED TO AN INDIVIDUAL

03:38PM 3 NAMED SUNNY BALWANI?

03:38PM 4 A. YES.

03:38PM 5 Q. AND YOU MENTIONED TO ME THAT IT MAY HAVE AFFECTED YOUR

03:38PM 6 OPINION IN 2013; IS THAT RIGHT?

03:38PM 7 A. CORRECT.

03:38PM 8 Q. AND BY THAT, DO YOU MEAN IF THERANOS'S LAB DIRECTOR WAS

03:38PM 9 EXPRESSING SOME CONCERNS ABOUT WHETHER THERANOS WAS READY TO

03:38PM 10 LAUNCH, YOU WOULD WANT TO KNOW WHETHER THEY WERE FIXED, AND

03:38PM 11 WHETHER THERE WERE PROBLEMS, AND IF THERE WERE PROBLEMS, AND IT

03:38PM 12 WOULD HAVE BEEN HELPFUL TO KNOW IF THE PROBLEMS WERE FIXED

03:38PM 13 BEFORE YOU REFERRED PATIENTS; IS THAT ACCURATE?

03:38PM 14 A. CORRECT.

03:38PM 15 Q. THANK YOU.

03:38PM 16 WOULD YOU NOW TURN TO TAB 4147.

03:38PM 17 YOUR HONOR, 4147 HAS ALREADY BEEN ADMITTED. PERMISSION TO

03:38PM 18 PUBLISH?

03:38PM 19 THE COURT: YES.

03:38PM 20 MR. SCHENK: THANK YOU.

03:38PM 21 Q. IF WE COULD LOOK AT THE EMAIL, THE THIRD ONE DOWN FROM

03:39PM 22 ADAM ROSENDORFF AGAIN.

03:39PM 23 DR. WOOTEN, DID MR. COOPERSMITH SHOW YOU THIS EMAIL BEFORE

03:39PM 24 YOU TESTIFIED TODAY?

03:39PM 25 A. NO.

03:39PM 1 Q. AND YOU TESTIFIED ON DIRECT THAT YOU YOURSELF HAD HCG
03:39PM 2 TESTING DONE; IS THAT RIGHT?

03:39PM 3 A. YES.

03:39PM 4 Q. AND YOU MADE THE DECISION TO GET HCG TESTING DONE AT
03:39PM 5 THERANOS; CORRECT?

03:39PM 6 A. YES.

03:39PM 7 Q. AND DID YOU ALSO REFER SOME OF YOUR PATIENTS TO THERANOS
03:39PM 8 FOR HCG TESTING?

03:39PM 9 A. I CANNOT RECALL.

03:39PM 10 Q. I'LL SHOW YOU A DOCUMENT IN A MOMENT THAT MIGHT HELP
03:39PM 11 REFRESH, BUT BEFORE WE GET THERE, A SIMILAR QUESTION HERE.

03:39PM 12 DO YOU SEE NUMBER 1 WHERE DR. ROSENDORFF IS HALTING HCG
03:39PM 13 TESTING?

03:39PM 14 DO YOU SEE THAT?

03:39PM 15 A. CORRECT.

03:39PM 16 Q. AND IF YOU HAD KNOWN IN 2015 THAT HCG TESTING AT THERANOS
03:39PM 17 HAD BEEN HALTED BY THE LAB DIRECTOR, WOULD THAT HAVE AFFECTED
03:39PM 18 YOUR DECISION TO YOURSELF GO GET HCG TESTING AT THERANOS?

03:39PM 19 A. IT WOULDN'T HAVE HALTED ME IN 2015.

03:40PM 20 Q. WHY IS THAT? YOU WOULD HAVE ASSUMED THEY FIXED THE
03:40PM 21 PROBLEM?

03:40PM 22 A. CORRECT.

03:40PM 23 Q. I SEE.

03:40PM 24 BUT IF THEY HADN'T, WOULD THAT HAVE AFFECTED YOUR OPINION?

03:40PM 25 A. CORRECT.

03:40PM 1 Q. NOW LOOK AT THE VERY TOP.

03:40PM 2 DO YOU SEE THAT THIS EMAIL GETS FORWARDED -- I'M SORRY,
03:40PM 3 GETS SENT FROM MR. BALWANI TO MS. HOLMES? DO YOU SEE AT THE
03:40PM 4 VERY TOP?

03:40PM 5 A. YES.

03:40PM 6 Q. WOULD YOU NOW TURN TO TAB 5421.

03:40PM 7 5421 HAS BEEN PREVIOUSLY ADMITTED.

03:40PM 8 PERMISSION TO PUBLISH, YOUR HONOR?

03:40PM 9 THE COURT: YES.

03:40PM 10 BY MR. SCHENK:

03:40PM 11 Q. DO YOU SEE, DR. WOOTEN, DO YOU SEE THIS EMAIL HERE? WAS
03:40PM 12 THIS SHOWN TO YOU BY MR. COOPERSMITH BEFORE YOU TESTIFIED?

03:40PM 13 A. NO.

03:40PM 14 Q. IN THIS EMAIL, DO YOU SEE WHERE IT SAYS THAT 33 EDISONS QC
03:40PM 15 ON JUNE 24TH IN THE EVENING, 20 EDISONS PASSED, 9 EDISONS FOR,
03:41PM 16 AND THEN IT LISTS SOME ASSAYS.

03:41PM 17 AND DO YOU SEE HCG IS INCLUDED AS ONE OF THE ASSAYS?

03:41PM 18 A. CORRECT.

03:41PM 19 Q. AND DO YOU SEE THAT IT SAYS THAT NINE EDISONS FAILED
03:41PM 20 LEVEL 1 AND/OR LEVEL 2 QC ON HCG?

03:41PM 21 A. YES.

03:41PM 22 Q. SO NOW SEEING THAT SOME EDISON DEVICES WERE FAILING QC FOR
03:41PM 23 THE HCG ASSAY, DO YOU THINK THAT KNOWLEDGE WOULD HAVE AFFECTED
03:41PM 24 YOUR DECISION, EITHER YOURSELF TO GET HCG TESTING AT THERANOS,
03:41PM 25 OR TO REFER PATIENTS?

03:41PM 1 A. IT WOULD NOT.

03:41PM 2 Q. WHY IS THAT?

03:41PM 3 A. BECAUSE I KNEW I WAS PREGNANT, SO I WANTED TO CONFIRM IT,

03:41PM 4 AND IT WAS EASY TO CONFIRM.

03:41PM 5 Q. YOU KNEW YOU WERE PREGNANT BECAUSE OF THE URINE TEST?

03:41PM 6 A. CORRECT.

03:41PM 7 Q. AND WAS PART OF YOUR CONFIDENCE YOUR MEDICAL TRAINING?

03:41PM 8 A. CORRECT.

03:41PM 9 Q. SO HOW ABOUT THE SAME QUESTION FOR YOUR PATIENTS. WOULD

03:41PM 10 YOU STILL FEEL COMFORTABLE REFERRING ONE OF YOUR PATIENTS WHO

03:42PM 11 DID NOT HAVE MEDICAL TRAINING AND DID NOT HAVE CONFIDENCE IN

03:42PM 12 THE URINE TEST, WOULD YOU REFER THEM TO THERANOS FOR HCG

03:42PM 13 TESTING?

03:42PM 14 A. I WOULD.

03:42PM 15 Q. EVEN THOUGH YOU SEE IT FAILS QC.

03:42PM 16 WHY IS THAT?

03:42PM 17 A. BECAUSE IF I KNOW THE PERSON IS PREGNANT, AND I KNOW TO

03:42PM 18 USE A BACK-UP LAB TO CONFIRM THE RESULTS EITHER WAY.

03:42PM 19 Q. I'M SORRY. I MISSED WHAT YOU SAID AFTER --

03:42PM 20 A. I WOULD USE A DIFFERENT LAB TO CONFIRM THE RESULTS EITHER

03:42PM 21 WAY.

03:42PM 22 Q. I SEE. SO YOU WOULDN'T TRUST THE THERANOS, YOU WOULD GO

03:42PM 23 TO A DIFFERENT LAB ANYWAY?

03:42PM 24 A. IF I FELT THAT THE THERANOS LAB WAS INCORRECT.

03:42PM 25 Q. THEN YOU -- IF YOU THOUGHT THEY WERE INCORRECT, YOU

03:42PM 1 WOULDND'T USE THEM?

03:42PM 2 A. CORRECT.

03:42PM 3 Q. OKAY. AND THIS WASN'T INFORMATION THAT YOU HAD AT THE

03:42PM 4 TIME WHEN YOU SAID EARLIER YOU WERE COMFORTABLE SENDING

03:42PM 5 PATIENTS?

03:42PM 6 A. CORRECT.

03:42PM 7 Q. I GOT IT. THANK YOU.

03:42PM 8 BEFORE YOU TESTIFIED TODAY, DID MR. COOPERSMITH TELL YOU A

03:43PM 9 STORY ABOUT A PATIENT NAMED BRITTANY GOULD?

03:43PM 10 A. NO.

03:43PM 11 Q. HE DIDN'T TELL YOU THERE WAS A PATIENT WHO WAS NOT A

03:43PM 12 DOCTOR WHO WENT TO THERANOS AND GOT AN HCG TEST THAT TOLD HER

03:43PM 13 SHE DID NOT HAVE A VIABLE PREGNANCY WHEN SHE DID?

03:43PM 14 A. NO.

03:43PM 15 Q. YOU DIDN'T KNOW THAT?

03:43PM 16 A. NO.

03:43PM 17 Q. KNOWING THAT NOW, WOULD YOU BE COMFORTABLE REFERRING

03:43PM 18 PATIENTS IN THE 2015 TIMEFRAME?

03:43PM 19 A. I WOULD STILL BE COMFORTABLE?

03:43PM 20 Q. YOU STILL WOULD REFER PATIENTS?

03:43PM 21 A. UH-HUH.

03:43PM 22 Q. IS IT BECAUSE OF THE REASON YOU TOLD ME A MOMENT AGO, AND

03:43PM 23 THAT'S BECAUSE YOU WOULD GO TO ANOTHER LAB TO GET A

03:43PM 24 CONFIRMATORY TEST, SO YOU WOULDND'T REALLY RELY ON THAT FIRST

03:43PM 25 THERANOS TEST?

03:43PM 1 A. IF I TRULY BELIEVED THE PATIENT WAS PREGNANT, YES, I WOULD
03:43PM 2 DO A FOLLOWUP. BUT OTHER LABS MAKE HONEST MISTAKES, TOO.

03:43PM 3 Q. THERE'S MISTAKES THAT OCCUR AT VARIOUS LABS?

03:43PM 4 A. YEAH.

03:43PM 5 Q. RIGHT.

03:43PM 6 AND IF THERE WAS, IN THIS OTHER LAB THAT, AS YOU SAY, IT
03:43PM 7 WOULD MAKE AN HONEST MISTAKE, WOULD YOU EXPECT THAT IN THAT
03:43PM 8 LAB, THE ACTUAL LAB DIRECTORS, THE MEDICAL PROFESSIONALS, WOULD
03:44PM 9 BE THE ONES MAKING THE DECISIONS, IS THAT HOW YOU WOULD EXPECT
03:44PM 10 IT TO WORK, NOT MBA'S, FOR INSTANCE?

03:44PM 11 MR. COOPERSMITH: OBJECTION. LACKS FOUNDATION.
03:44PM 12 MISSTATES TESTIMONY.

03:44PM 13 THE COURT: SUSTAINED. SUSTAINED.

03:44PM 14 BY MR. SCHENK:

03:44PM 15 Q. YOU SAID YOU FEEL COMFORTABLE SENDING PATIENTS TO THERANOS
03:44PM 16 BECAUSE ALL LABS MAKE MISTAKES?

03:44PM 17 A. CORRECT.

03:44PM 18 Q. AND I'M SORT OF WONDERING ABOUT YOUR CONFIDENCE LEVEL IN
03:44PM 19 LABS TO FIX PROBLEMS.

03:44PM 20 IF MISTAKES ARE INEVITABLE, THEN WE SHOULD SPEND A MOMENT
03:44PM 21 TALKING ABOUT HOW THOSE MISTAKES GET FIXED IF THEY'RE
03:44PM 22 INEVITABLE.

03:44PM 23 AND WHEN YOU WOULD EXPECT A LAB TO FIX THEIR MISTAKES, WHO
03:44PM 24 THERE WOULD YOU EXPECT TO DO THAT, TO MAKE THOSE DECISIONS AT
03:44PM 25 THE LAB?

03:44PM 1 A. TO WHOEVER IS IN CHARGE OF THE LAB.

03:44PM 2 Q. WHOEVER IS IN CHARGE OF THE LAB?

03:44PM 3 A. UH-HUH.

03:44PM 4 Q. THANK YOU.

03:44PM 5 YOU SAID THAT IF THE THERANOS TEST WASN'T RELIABLE, AND

03:44PM 6 YOU STILL UNDERSTOOD THAT THE PATIENT WAS PREGNANT, YOU WOULD

03:44PM 7 SEND THEM OUT TO GET A CONFIRMATORY TEST, A SECOND TEST?

03:45PM 8 A. CORRECT.

03:45PM 9 Q. IF THE THERANOS TEST SAID TO MS. GOULD THAT SHE WAS NOT

03:45PM 10 PREGNANT AND SHE WAS PREGNANT, THERE'S NO OTHER VALUE TO THAT

03:45PM 11 LAB TEST, RIGHT, AN INACCURATE LAB TEST HAS NO VALUE? WE AGREE

03:45PM 12 ON THAT?

03:45PM 13 A. CORRECT.

03:45PM 14 Q. SO WHEN YOU TELL ME YOU WOULD GO TO ANOTHER LAB, IT'S

03:45PM 15 BECAUSE YOU WOULD DISREGARD OR IGNORED THE THERANOS LAB TEST;

03:45PM 16 CORRECT?

03:45PM 17 A. CORRECT.

03:45PM 18 Q. YOU AND I HAVE BEEN TALKING ABOUT A PATIENT YOU DON'T

03:45PM 19 KNOW, SOMEONE NAMED BRITTANY GOULD, WHO RECEIVED AN INACCURATE

03:45PM 20 HCG TEST.

03:45PM 21 I ASSUME THAT STORY IS NOT SURPRISING TO YOU. DO YOU

03:45PM 22 RECALL ONE OF YOUR PATIENTS HAVING AN HCG TEST FROM THERANOS

03:45PM 23 VOIDED?

03:45PM 24 A. I DON'T RECALL.

03:45PM 25 Q. YOU DON'T RECALL THAT?

03:45PM 1 AT TAB 5861 -- THIS HAS NOT BEEN ADMITTED -- WOULD YOU
03:45PM 2 TURN TO PAGE 42.
03:46PM 3 PLEASE DON'T READ OUT LOUD THE CONTENT OF THE DOCUMENT.
03:46PM 4 I'M JUST ASKING IF THIS REFRESHES YOUR RECOLLECTION THAT ONE OF
03:46PM 5 YOUR PATIENTS THAT WAS SENT TO THERANOS AND GOT AN HCG HAD THAT
03:46PM 6 TEST VOIDED.
03:46PM 7 DOES THIS REFRESH YOUR RECOLLECTION THAT THAT HAPPENED?
03:46PM 8 A. WHAT PAGE AM I LOOKING AT?
03:46PM 9 THE COURT: THE PAGES ARE IN THE MIDDLE ON THE
03:46PM 10 BOTTOM IN THE SMALL PRINT I THINK.
03:46PM 11 IS THAT RIGHT, MR. SCHENK?
03:46PM 12 MR. SCHENK: YES. THANK YOU, YOUR HONOR.
03:46PM 13 THE COURT: THE LOWER.
03:46PM 14 MR. COOPERSMITH: THE VERY BOTTOM OF THE DOCUMENT,
03:46PM 15 SORT OF IN THE CENTER IT SAYS TRIAL EXHIBIT 861, AND THEN PAGE,
03:46PM 16 AND IT'S A FIVE DIGIT NUMBER.
03:46PM 17 THE WITNESS: OKAY.
03:46PM 18 MR. SCHENK: 42.
03:46PM 19 Q. WOULD YOU LIKE THE QUESTION AGAIN?
03:47PM 20 A. YES.
03:47PM 21 Q. THE QUESTION IS, DOES LOOKING AT THIS DOCUMENT REFRESH
03:47PM 22 YOUR RECOLLECTION THAT ONE OF YOUR PATIENTS THAT WENT TO
03:47PM 23 THERANOS FOR AN HCG TEST HAD THAT TEST RESULT VOIDED?
03:47PM 24 A. I CAN'T RECALL.
03:47PM 25 Q. YOU DON'T RECALL.

03:47PM 1 DO YOU RECALL THIS AT LEAST OCCURRING IN THE LATTER PART,
03:47PM 2 LIKE DECEMBER OF 2014, OR DOES THE DOCUMENT REFRESH YOUR
03:47PM 3 RECOLLECTION THAT THAT'S WHEN THIS OCCURRED?

03:47PM 4 A. THE DATE AGAIN?

03:47PM 5 Q. DECEMBER OF 2014?

03:47PM 6 A. 2014. I CAN'T RECALL.

03:48PM 7 MR. SCHENK: YOUR HONOR, PERMISSION TO PUBLISH
03:48PM 8 ADMITTED EXHIBIT 4533.

03:48PM 9 THE COURT: YES.

03:48PM 10 BY MR. SCHENK:

03:48PM 11 Q. DR. WOOTEN, BEFORE TESTIFYING TODAY, DID MR. COOPERSMITH
03:48PM 12 SHOW YOU THIS DOCUMENT THAT SHOWS WHEN THERANOS WAS RUNNING
03:48PM 13 CERTAIN TESTS ON THE EDISON DEVICE?

03:48PM 14 A. NO.

03:48PM 15 Q. IF WE COULD ZOOM IN ON THAT CHART.

03:48PM 16 DO YOU SEE THERE THAT HCG WAS TESTED ON THE EDISON DURING
03:48PM 17 THE DECEMBER 2014 TIMEFRAME?

03:48PM 18 DO YOU SEE THAT?

03:48PM 19 A. YES.

03:48PM 20 Q. SO IF NOW SEEING THAT ONE OF YOUR PATIENTS HAD A VOIDED
03:48PM 21 TEST IN THIS DECEMBER TIMEFRAME, WOULD YOU STILL FEEL
03:48PM 22 COMFORTABLE SENDING PATIENTS TO THERANOS?

03:48PM 23 A. NOT FOR AN HCG TEST.

03:48PM 24 Q. COULD YOU NOW TURN TO EXHIBIT 1548 IN THE BINDER.

03:49PM 25 YOUR HONOR, PERMISSION TO PUBLISH 1548? IT'S BEEN

03:49PM 1 PREVIOUSLY ADMITTED.

03:49PM 2 THE COURT: YES.

03:49PM 3 BY MR. SCHENK:

03:49PM 4 Q. IF WE CAN BRING UP THE EXCEL DOCUMENT, MS. WACHS.

03:49PM 5 DR. WOOTEN, DO YOU SEE HERE AN EXCEL CHART THAT CONTAINS
03:49PM 6 SOME VARIOUS ASSAYS DOWN THE LEFT-HAND COLUMN?

03:49PM 7 A. YES.

03:49PM 8 Q. AND DID MR. COOPERSMITH SHOW YOU THIS DOCUMENT BEFORE YOU
03:49PM 9 TESTIFIED TODAY?

03:49PM 10 A. NO.

03:49PM 11 Q. ON PSA, DO YOU SEE WHERE IT COMPARES THERANOS TEST RESULTS
03:49PM 12 TO THE PREDICATE METHOD?

03:49PM 13 DO YOU SEE THAT?

03:49PM 14 A. YES.

03:49PM 15 Q. AND DO YOU SEE HOW THE PREDICATE, IF YOU FOLLOW ME THROUGH
03:50PM 16 IN COLUMNS D, E, F, AND G, THE PREDICATE REPEATS ITSELF? IT
03:50PM 17 GETS 3.1 AND THEN 3.1 AGAIN.

03:50PM 18 DO YOU SEE THAT?

03:50PM 19 A. YES.

03:50PM 20 Q. AND THEN 7.5 AND 7.5 AGAIN.

03:50PM 21 DO YOU SEE THAT?

03:50PM 22 A. YES.

03:50PM 23 Q. BUT BELOW ON THE THERANOS DEVICE, DO YOU SEE HOW THE
03:50PM 24 RERUNS ARE DIFFERENT, IT'S 1.9, AND THEN IT'S 2.6 OR IT'S 4.9,
03:50PM 25 AND THEN IT'S 7.2?

03:50PM 1 DO YOU SEE THAT FOR PSA?

03:50PM 2 A. YES.

03:50PM 3 Q. SEEING HERE THAT IN FEBRUARY OF 2014, IF YOU WOULD LIKE TO
03:50PM 4 LOOK -- I MOVED QUICKLY PAST IT, BUT THIS WAS ATTACHED TO AN
03:50PM 5 EMAIL THAT WAS FROM FEBRUARY OF 2014. IF YOU TURN BACK TO THAT
03:50PM 6 FIRST PAGE.

03:50PM 7 A. I'M SORRY. WHAT PAGE?

03:50PM 8 Q. PAGE 1 OF TRIAL EXHIBIT 1548.

03:50PM 9 A. OKAY.

03:50PM 10 Q. DO YOU SEE THAT THAT'S AN EMAIL DATED IN FEBRUARY OF 2014?

03:51PM 11 A. YES.

03:51PM 12 Q. SO IF YOU HAD KNOWN THAT THERANOS WAS NOT GETTING THESE
03:51PM 13 REPEATABLE PSA VALUES, WOULD YOU HAVE BEEN COMFORTABLE SENDING
03:51PM 14 YOUR PATIENTS TO THERANOS FOR PSA TESTS?

03:51PM 15 MR. COOPERSMITH: OBJECTION. MISCHARACTERIZES PRIOR
03:51PM 16 TESTIMONY ABOUT THIS DOCUMENT.

03:51PM 17 THE COURT: I'M SORRY, SAY AGAIN.

03:51PM 18 MR. COOPERSMITH: OBJECTION. IT'S LACK OF
03:51PM 19 FOUNDATION BECAUSE IT MISCHARACTERIZES THE PRIOR TESTIMONY AND
03:51PM 20 THE EVIDENCE ABOUT THIS PARTICULAR EXHIBIT.

03:51PM 21 THE COURT: YOU KNOW, I'M GOING TO SUSTAIN THE
03:51PM 22 OBJECTION FOR DIFFERENT GROUNDS, AS TO TESTIFYING TO THIS. I
03:51PM 23 DON'T THINK SHE'S QUALIFIED TO TESTIFY ABOUT THESE.

03:51PM 24 MR. SCHENK: OKAY. I'LL MOVE ON.

03:51PM 25 THE COURT: SO I'LL SUSTAIN THE OBJECTION.

03:51PM 1 MR. SCHENK: OKAY. PERMISSION TO PUBLISH 4938.

03:52PM 2 THE COURT: YES.

03:52PM 3 BY MR. SCHENK:

03:52PM 4 Q. DR. WOOTEN, BEFORE HE TESTIFIED TODAY, DID MR. COOPERSMITH

03:52PM 5 TALK TO YOU ABOUT A CERTAIN PATIENT NAMED MEHRL ELLSWORTH?

03:52PM 6 A. NO.

03:52PM 7 Q. HAVE YOU SEEN MEHRL ELLSWORTH'S TESTS BEFORE?

03:52PM 8 A. NO.

03:52PM 9 Q. AND DO YOU SEE HERE THAT DR. ELLSWORTH RECEIVED A PSA

03:52PM 10 SCORE IN THE 20'S ON THIS TEST, 26.1?

03:52PM 11 A. YES.

03:52PM 12 Q. YOU TOLD ME A MOMENT AGO YOU WOULDN'T FEEL COMFORTABLE

03:52PM 13 SENDING HCG, OR PATIENTS WHO NEEDED AN HCG TEST, TO THERANOS

03:52PM 14 NOW SEEING THE DOCUMENTS THAT I'VE SHOWN YOU; IS THAT FAIR?

03:52PM 15 A. THAT'S FAIR.

03:52PM 16 Q. AND SAME QUESTION FOR PSA. IF YOU KNEW THAT

03:52PM 17 MEHRL ELLSWORTH RECEIVED A 26 ON HIS PSA WHEN THAT'S NOT AN

03:52PM 18 ACCURATE VALUE, WOULD YOU FEEL COMFORTABLE SENDING YOUR

03:52PM 19 PATIENTS FOR A PSA TEST TO THERANOS?

03:52PM 20 MR. COOPERSMITH: YOUR HONOR, 702.

03:52PM 21 THE COURT: SUSTAINED. SUSTAINED.

03:53PM 22 (LAUGHTER.)

03:53PM 23 MR. SCHENK: PERMISSION TO PUBLISH 4182?

03:53PM 24 THE COURT: YES.

03:53PM 25 BY MR. SCHENK:

03:53PM 1 Q. I'LL GIVE YOU A MINUTE.

03:53PM 2 A. YES.

03:53PM 3 Q. BEFORE TESTIFYING TODAY, DID MR. COOPERSMITH SHOW YOU THIS

03:53PM 4 EXHIBIT 4182?

03:53PM 5 A. NO.

03:53PM 6 Q. IN THE TOP EMAIL HERE, THE ONE THAT GOES FROM SOMEONE

03:53PM 7 NAMED DANIEL YOUNG TO SUNNY BALWANI, DO YOU SEE A LIST OF

03:53PM 8 ISSUES WITH ASSAYS BEING DISCUSSED, PT INR, HCG, TESTOSTERONE,

03:53PM 9 VITAMIN B12, TSH, C02 AND A FEW MORE IN THE LAST BULLET.

03:53PM 10 DO YOU SEE THAT?

03:53PM 11 A. I DO.

03:53PM 12 Q. AND SO THEN THE SAME QUESTION. IF YOU KNEW THAT INSIDE OF

03:54PM 13 THERANOS THEY WERE DISCUSSING ISSUES WITH THIS HALF A DOZEN OR

03:54PM 14 SO ASSAYS AT THE TIME, WOULD YOU HAVE FELT COMFORTABLE SENDING

03:54PM 15 YOUR PATIENTS TO THERANOS IN THE 2015, 2016 TIMEFRAME?

03:54PM 16 A. WHICH TIMEFRAME?

03:54PM 17 Q. THIS EMAIL IS DATED AUGUST OF 2014, AND I THINK YOU AND I

03:54PM 18 JUST LOOKED AT AN EXAMPLE OF A PATIENT THAT YOU SENT IN

03:54PM 19 DECEMBER OF 2014.

03:54PM 20 DO YOU RECALL THAT?

03:54PM 21 A. CORRECT.

03:54PM 22 Q. SO IT LOOKS LIKE YOU WERE EVEN SENDING PATIENTS TO

03:54PM 23 THERANOS IN 2014; IS THAT RIGHT?

03:54PM 24 A. I ASSUME SO.

03:54PM 25 Q. IT LOOKS LIKE IT?

03:54PM 1 A. YEAH.

03:54PM 2 Q. SO SEEING THIS EMAIL NOW IN THE AUGUST 2014 TIMEFRAME, IF

03:54PM 3 YOU HAD KNOWN THAT INSIDE THE FOUR WALLS AT THERANOS THEY WERE

03:55PM 4 DISCUSSING THESE KIND OF ASSAY ISSUES, WOULD YOU STILL FEEL

03:55PM 5 COMFORTABLE SENDING PATIENTS TO THERANOS?

03:55PM 6 A. WOULD THEY LET ME KNOW THAT THEY WERE VOIDED OR INCORRECT?

03:55PM 7 Q. I'M SORRY?

03:55PM 8 A. WAS THE LAB LETTING ME KNOW THAT THEY WERE INCORRECT?

03:55PM 9 Q. WAS THE LAB?

03:55PM 10 A. WAS THE LAB GOING TO LET ME KNOW THAT THE VALUE WAS

03:55PM 11 INCORRECT?

03:55PM 12 Q. IT WOULD BE HELPFUL IF --

03:55PM 13 A. RIGHT.

03:55PM 14 Q. I'M SORRY. WOULD IT BE HELPFUL TO EVEN ANSWER MY

03:55PM 15 QUESTION. IF YOU KNEW WHETHER THE LAB WAS LETTING YOU KNOW

03:55PM 16 ABOUT THESE KIND OF VOIDED ASSAYS, IS THAT WHAT YOU'RE SAYING?

03:55PM 17 A. RIGHT. WITH THE PATIENT THAT WE HAD WITH THE HCG, I KNEW

03:55PM 18 IT WAS VOIDED, SO LET ME RETEST ANOTHER WAY.

03:55PM 19 Q. SURE. SO, FOR INSTANCE, YOU SEE HCG IS HERE?

03:55PM 20 A. RIGHT.

03:55PM 21 Q. AND THIS IS IN AUGUST.

03:56PM 22 AND THE ONE WE TALKED ABOUT WAS -- YOU ACTUALLY SENT

03:56PM 23 SOMEONE IN DECEMBER. SO EVEN AFTER THE LAB IS TALKING ABOUT

03:56PM 24 ISSUES; RIGHT?

03:56PM 25 HOW ABOUT VITAMIN B12? SO IF YOU'LL GO BACK TO THAT

03:56PM 1 EXHIBIT THAT I POINTED TO YOU A MOMENT AGO, EXHIBIT 5861.

03:56PM 2 LET ME KNOW WHEN I'VE POINTED YOU TO ENOUGH PAGE NUMBERS

03:56PM 3 TO ANSWER MY QUESTION.

03:56PM 4 START AT PAGE 89.

03:56PM 5 A. ONE MOMENT.

03:56PM 6 Q. THE SAME LITTLE PAGE NUMBERS AT THE VERY, VERY BOTTOM?

03:56PM 7 A. WHAT IS THE TAB? I'M SORRY.

03:56PM 8 Q. SORRY. IT'S 5821.

03:56PM 9 I'M SORRY, 5861.

03:56PM 10 A. 5861. OKAY. I'M THERE.

03:56PM 11 Q. AND IF YOU'LL LOOK AT PAGE 89.

03:56PM 12 A. YES.

03:56PM 13 Q. SO I THINK YOU ASKED ME IF THERE WERE INSTANCES WHEN THESE

03:56PM 14 KINDS OF TESTS WERE LAB TESTS THAT YOUR PATIENTS HAD THAT

03:57PM 15 THERANOS THEN VOIDED.

03:57PM 16 AND DO YOU SEE HERE IS AN EXAMPLE?

03:57PM 17 A. RIGHT, I SEE THE B12 IS VOIDED.

03:57PM 18 Q. AND HOW ABOUT PAGES -- YOU CAN LOOK AT PAGE 47.

03:57PM 19 A. OKAY. OKAY.

03:57PM 20 Q. DO YOU SEE THAT ONE, TOO?

03:57PM 21 A. YES.

03:57PM 22 Q. AND 94, PAGE 94?

03:58PM 23 A. YES.

03:58PM 24 Q. PAGE 143?

03:58PM 25 A. YES.

03:58PM 1 Q. I CAN KEEP GOING, BUT LET ME CHECK AND SEE. IS THAT
03:58PM 2 ENOUGH?

03:58PM 3 A. OH, THAT'S ENOUGH. I'VE GOT THEM RIGHT HERE.

03:58PM 4 Q. SO JUST TO CLOSE THE LOOP ON THAT.

03:58PM 5 THEN IS YOUR ANSWER THAT YOU WOULD THEN NOT BE COMFORTABLE
03:58PM 6 SENDING PATIENTS -- YOU WOULDN'T HAVE BEEN COMFORTABLE SENDING
03:58PM 7 PATIENTS IF YOU HAD KNOWN THIS?

03:58PM 8 A. WELL, I THINK I DID KNOW THIS BECAUSE THEY SAID THAT
03:58PM 9 WITHDRAW IS RECOMMENDED.

03:58PM 10 I WOULDN'T HAVE BEEN COMFORTABLE IF THEY -- I WOULD NOT
03:58PM 11 HAVE BEEN COMFORTABLE --

03:59PM 12 Q. YOU WOULD NOT HAVE BEEN COMFORTABLE SENDING PATIENTS TO
03:59PM 13 THERANOS --

03:59PM 14 A. -- IF THEY DIDN'T LET ME KNOW THAT IT WAS VOIDED.

03:59PM 15 Q. HELP ME UNDERSTAND THAT.

03:59PM 16 YOU'RE SENDING PATIENTS TO GET A BLOOD TEST?

03:59PM 17 A. RIGHT, UH-HUH.

03:59PM 18 Q. AND THAT LAB COMPANY HAS TO VOID THE TESTS?

03:59PM 19 A. RIGHT.

03:59PM 20 Q. AND YOU'RE SAYING YOU'RE COMFORTABLE BECAUSE YOU KNOW THEY
03:59PM 21 VOIDED THE TESTS?

03:59PM 22 A. ON CERTAIN TESTS, YES.

03:59PM 23 SO IF THEY WOULD HAVE GIVEN ME A B12, THEY DIDN'T VOID IT
03:59PM 24 OUT, AND I THOUGHT IT WAS AN ACCURATE TEST, THEN I WOULD HAVE
03:59PM 25 BEEN NOT COMFORTABLE.

03:59PM 1 BUT SINCE YOU TOLD ME TO REDRAW IT, THEN I WOULD REDRAW IT

03:59PM 2 AT A DIFFERENT LAB.

03:59PM 3 Q. OH. YOU WOULDN'T GO BACK TO THERANOS AFTER GETTING THE

03:59PM 4 VOID?

03:59PM 5 A. CORRECT.

03:59PM 6 Q. BECAUSE YOU WOULD WANT IT TO BE ACCURATE THE FIRST TIME?

03:59PM 7 YOU SAID IF THEY TOLD YOU TO VOID THIS TEST, YOU WOULD

03:59PM 8 APPRECIATE KNOWING THAT BECAUSE THEN YOU COULD SEND YOUR

03:59PM 9 PATIENT TO A DIFFERENT LAB; IS THAT RIGHT?

03:59PM 10 A. CORRECT.

03:59PM 11 Q. AND I GUESS MY QUESTION WAS, IF YOU HAD SEEN THIS EMAIL,

03:59PM 12 THE ONE THAT IS ON THE SCREEN IN FRONT OF YOU --

04:00PM 13 A. UH-HUH.

04:00PM 14 Q. -- THAT SHOWED IN AUGUST OF 2014, THERANOS DISCUSSING

04:00PM 15 ISSUES RELATING TO VARIOUS ASSAYS, INCLUDING VITAMIN B12, IF

04:00PM 16 YOU HAD KNOWN THAT INFORMATION, WOULD YOU HAVE BEEN COMFORTABLE

04:00PM 17 FOR EVEN SENDING THEM TO THERANOS IN THE FIRST PLACE?

04:00PM 18 A. CORRECT.

04:00PM 19 Q. AND I'M WONDERING WHAT YOUR ANSWER IS?

04:00PM 20 A. OH. I PROBABLY WOULDN'T HAVE ASKED FOR THOSE TESTS AT

04:00PM 21 THERANOS.

04:00PM 22 Q. YOU WOULD HAVE TRUSTED OTHER TESTS AT THERANOS, BUT NOT

04:00PM 23 THESE?

04:00PM 24 A. CORRECT.

04:00PM 25 Q. INTERESTING. OKAY.

04:00PM 1 WOULD YOU TURN NOW TO 4189.

04:00PM 2 YOUR HONOR, 4189 HAS BEEN PREVIOUSLY ADMITTED.

04:00PM 3 PERMISSION TO PUBLISH?

04:00PM 4 THE COURT: YES.

04:00PM 5 BY MR. SCHENK:

04:00PM 6 Q. DR. WOOTEN, DO YOU SEE THE SECOND EMAIL DOWN FROM THE TOP
04:01PM 7 FROM DR. ROSENDORFF TO MR. BALWANI?

04:01PM 8 A. YES.

04:01PM 9 Q. AND DID MR. COOPERSMITH SHOW YOU THIS BEFORE YOU TESTIFIED
04:01PM 10 TODAY?

04:01PM 11 A. NO.

04:01PM 12 Q. DO YOU SEE WHERE THE LAB DIRECTOR WRITES TO MR. BALWANI IN
04:01PM 13 AUGUST OF 2014, "I AM THINKING THAT SINCE WE VOID ALL ABNORMAL
04:01PM 14 BICARBONATE RESULTS, THE TEST HAS LOST ANY DIAGNOSTIC VALUE,
04:01PM 15 AND PROBABLY ALSO RELIABILITY WHEN RESULTS ARE REPORTED IN THE
04:01PM 16 NORMAL RANGE. FOR INSTANCE, THE CORRECT BICARB VALUE IN THE
04:01PM 17 PATIENT MAY, IN FACT, BE HIGH AND DUE TO OUTGASSING THE BICARB
04:01PM 18 MIGHT NORMALIZE AND WE WOULD BE REPORTING A FALSELY NORMAL
04:01PM 19 BICARB, WHEN IN FACT IT SHOULD BE HIGH.

04:01PM 20 "PROBABLY WE SHOULD DISCONTINUE THIS METHOD UNTIL WE HAVE
04:01PM 21 WORKED IT OUT BETTER."

04:01PM 22 DO YOU SEE THAT?

04:01PM 23 A. YES.

04:01PM 24 Q. IF YOU HAD KNOWN ABOUT THERANOS'S CHALLENGES WITH CO2 AT
04:01PM 25 THIS TIME, WOULD YOU HAVE STILL FELT COMFORTABLE SENDING YOUR

04:02PM 1 PATIENTS TO THERANOS?

04:02PM 2 A. NOT UNTIL THEY WORKED IT OUT.

04:02PM 3 Q. WOULD YOU TURN TO 1555.

04:02PM 4 MR. SCHENK: YOUR HONOR, 1555 HAS ALSO BEEN

04:02PM 5 ADMITTED.

04:02PM 6 PERMISSION TO PUBLISH?

04:02PM 7 THE COURT: YES.

04:02PM 8 MR. SCHENK: IF WE COULD GO TO PAGE 2 ON 1555.

04:02PM 9 Q. DO YOU SEE THE EMAIL AT THE VERY TOP FROM MR. BALWANI TO

04:02PM 10 SOMEONE NAMED DANIEL YOUNG, ADAM ROSENDORFF, AND

04:02PM 11 ELIZABETH HOLMES, THAT ONE AT THE VERY TOP.

04:02PM 12 A. YES.

04:02PM 13 Q. WHEN YOU WERE PREPARING TO TESTIFY TODAY, I TAKE IT

04:02PM 14 MR. COOPERSMITH DIDN'T SHOW YOU THIS ONE ALSO?

04:02PM 15 A. CORRECT.

04:02PM 16 Q. DO YOU SEE WHERE MR. BALWANI WRITES, "DANIEL, PUT EVERYONE

04:02PM 17 NEEDED ON THIS PROJECT, INCLUDING SAM AND EREZ, NISHIT AND

04:03PM 18 TINA. WE CANNOT REVERT BACK TO VENIPUNCTURE FOR HDL."

04:03PM 19 DO YOU SEE THAT?

04:03PM 20 A. YES.

04:03PM 21 Q. YOU WERE TELLING ME A MOMENT AGO THAT YOU WOULDN'T FEEL

04:03PM 22 COMFORTABLE SENDING PATIENTS TO THERANOS UNTIL THEY'VE WORKED

04:03PM 23 IT OUT.

04:03PM 24 I'VE SHOWED YOU SOME ISSUES AND YOU WOULD WANT THEM TO

04:03PM 25 WORK OUT THE PROBLEMS BEFORE YOU FELT COMFORTABLE SENDING

04:03PM 1 PATIENTS BACK TO THERANOS?

04:03PM 2 A. CORRECT.

04:03PM 3 Q. AND WHEN YOU ARE ASSUMING OR HOPING OR WISHING THAT

04:03PM 4 THERANOS DOES WORK OUT THOSE PROBLEMS, ARE YOU PUTTING SOME

04:03PM 5 TRUST OR SOME FAITH THAT THEY WOULD DO THAT? THAT IF THEY'RE

04:03PM 6 SEEING PROBLEMS, THAT THERANOS WOULD TRY TO FIX THOSE PROBLEMS?

04:03PM 7 IS THAT AN ASSUMPTION THAT YOU'RE MAKING?

04:03PM 8 A. UH-HUH.

04:03PM 9 Q. I'M SORRY?

04:03PM 10 A. CORRECT.

04:03PM 11 Q. AND WHEN YOU'RE MAKING THAT ASSUMPTION THAT THERANOS

04:03PM 12 WOULD, IF THEY IDENTIFIED THESE PROBLEMS -- YOU TOLD ME A

04:03PM 13 MOMENT AGO THAT ALL LABS HAVE PROBLEMS.

04:03PM 14 AND WHEN I'VE SHOWN YOU THESE AT THERANOS, YOUR HOPE IS

04:03PM 15 THAT THEY WOULD TRY TO FIX THEM WHEN THEY BECOME AWARE OF THEM

04:04PM 16 AT THERANOS; IS THAT RIGHT?

04:04PM 17 A. CORRECT.

04:04PM 18 Q. AND WHEN YOU'RE MAKING THAT ASSUMPTION, WHEN YOU'RE HOPING

04:04PM 19 THAT AT THERANOS THEY ARE WORKING TO FIX THOSE PROBLEMS, ARE

04:04PM 20 YOU PUTTING YOUR FAITH OR YOUR TRUST IN THE MEDICAL

04:04PM 21 PROFESSIONALS AT THERANOS TO MAKE THOSE CHANGES?

04:04PM 22 A. CORRECT.

04:04PM 23 Q. THANK YOU.

04:04PM 24 IF YOU'LL TURN TO 2228.

04:04PM 25 YOUR HONOR, 2228 HAS BEEN PREVIOUSLY ADMITTED.

04:04PM 1 PERMISSION TO PUBLISH?

04:04PM 2 THE COURT: YES.

04:04PM 3 BY MR. SCHENK:

04:04PM 4 Q. AT THE VERY TOP OF THIS EMAIL, DR. WOOTEN, DO YOU SEE

04:04PM 5 WHERE MR. BALWANI WRITES TO MS. HOLMES, "WE NEED TO RESPOND TO

04:04PM 6 HIM NOW AND CUT HIM MONDAY."

04:04PM 7 DO YOU SEE THAT?

04:04PM 8 A. YES.

04:04PM 9 Q. AND DID MR. COOPERSMITH TELL YOU THAT MR. BALWANI WAS

04:04PM 10 TALKING ABOUT THE MEDICAL PROFESSIONALS THAT YOU AND I WERE

04:04PM 11 JUST TALKING ABOUT, DR. ROSENDORFF, CUTTING HIM ON MONDAY?

04:04PM 12 A. NO.

04:04PM 13 Q. WHEN YOU WERE PREPARING TO TESTIFY TODAY, MR. COOPERSMITH

04:05PM 14 DIDN'T TELL YOU ABOUT MR. BALWANI SENDING AN EMAIL TALKING

04:05PM 15 ABOUT FIRING THE LAB DIRECTOR AT THERANOS?

04:05PM 16 A. CORRECT.

04:05PM 17 Q. IF WE COULD BRING UP EXHIBIT 5387H, PAGE 31.

04:05PM 18 YOUR HONOR, THIS HAS BEEN PREVIOUSLY ADMITTED. I DON'T

04:05PM 19 THINK THIS ONE IS IN THE BINDER. JUST ON THE SCREEN.

04:05PM 20 WILL THAT BE OKAY?

04:05PM 21 THE COURT: YES.

04:05PM 22 BY MR. SCHENK:

04:05PM 23 Q. 5387H, PAGE 31.

04:05PM 24 DR. WOOTEN, DO YOU SEE SOME TEXT MESSAGES NOW ON THE

04:05PM 25 SCREEN IN FRONT OF YOU?

04:05PM 1 A. I DO.

04:05PM 2 Q. AND DID MR. COOPERSMITH SHOW YOU TEXT MESSAGES BETWEEN

04:05PM 3 MR. BALWANI AND MS. HOLMES BEFORE YOU TESTIFIED TODAY?

04:05PM 4 A. NO, HE DID NOT.

04:05PM 5 Q. DO YOU SEE HERE WHERE MR. BALWANI IS WRITING ABOUT THE

04:05PM 6 DISASTER ZONE THAT THE LAB WAS IN NOVEMBER OF 2014?

04:05PM 7 MR. COOPERSMITH: OBJECTION. HE'S NOT READING THE

04:05PM 8 TEXT APPROPRIATELY. HE'S JUST PARAPHRASING IT.

04:06PM 9 THE COURT: WELL, DO YOU WANT HIM TO READ THE TEXT?

04:06PM 10 MR. COOPERSMITH: I THINK WE CAN ALL SEE IT.

04:06PM 11 (LAUGHTER.)

04:06PM 12 MR. COOPERSMITH: BUT I DON'T THINK HE'S ALLOWED TO

04:06PM 13 JUST GIVE HIS OWN SPIN ON IT.

04:06PM 14 MR. SCHENK: I THINK I AM ALLOWED TO ASK THE

04:06PM 15 QUESTIONS HOW I WANT.

04:06PM 16 THE COURT: WELL, GO AHEAD AND ASK THE QUESTIONS.

04:06PM 17 BY MR. SCHENK:

04:06PM 18 Q. THIS TEXT MESSAGE THAT IS NOW ON THE SCREEN SAYS,

04:06PM 19 "NORMANDY LAB IS AN" EXPLETIVE "DISASTER ZONE. GLAD I CAME

04:06PM 20 HERE. WILL WORK ON FIXING THIS."

04:06PM 21 DO YOU SEE THAT?

04:06PM 22 A. YES.

04:06PM 23 Q. SO IN DECEMBER OF 2014, JUST A FEW DAYS LATER, WITH THAT

04:06PM 24 VERY FIRST HCG -- DO YOU REMEMBER THAT FIRST HCG LAB THAT YOU

04:06PM 25 AND I JUST LOOKED AT A LITTLE WHILE AGO?

04:06PM 1 A. YES.

04:06PM 2 Q. DO YOU REMEMBER IT WAS RIGHT AT THE BEGINNING OF DECEMBER

04:06PM 3 OF 2014?

04:06PM 4 A. YES.

04:06PM 5 Q. SO DAYS EARLIER, DAYS BEFORE YOU SENT YOUR PATIENT TO GET

04:06PM 6 THAT HCG TEST, MR. BALWANI IS SENDING THIS TEXT.

04:06PM 7 IF YOU HAD KNOWN THAT, WOULD YOU STILL HAVE SENT HER TO

04:06PM 8 GET THAT HCG TEST?

04:06PM 9 A. I WOULD NOT.

04:06PM 10 Q. ONE LAST TOPIC I WANT TO COVER WITH YOU.

04:07PM 11 TODAY ISN'T THE FIRST TIME THAT THERANOS HAS CALLED UPON

04:07PM 12 YOU TO SPEAK OUT ON ITS BEHALF; IS THAT RIGHT?

04:07PM 13 A. CORRECT.

04:07PM 14 Q. TO SAY THINGS NICE ABOUT THERANOS?

04:07PM 15 A. CORRECT.

04:07PM 16 Q. THE PRIOR TIME THAT YOU WERE ASKED TO WAS AFTER "THE

04:07PM 17 WALL STREET JOURNAL" CAME OUT IN 2015, AND IT WAS PARTICULARLY

04:07PM 18 NEGATIVE. THERANOS WAS TRYING TO FIND ADVOCATES, I THINK THEY

04:07PM 19 WERE CALLED, IN THE ARIZONA COMMUNITY TO GO ON T.V. OR RECORD

04:07PM 20 ADVERTISING FOR THERANOS TO CHANGE THE NARRATIVE, TO CHANGE

04:07PM 21 PUBLIC OPINION, AND THEY ASKED YOU TO DO IT THEN ALSO; IS THAT

04:07PM 22 RIGHT?

04:07PM 23 A. I DO REMEMBER THEM ASKING ME TO DO A VIDEO FOR THEM.

04:07PM 24 Q. TO DO A VIDEO. RIGHT.

04:07PM 25 AND YOU SAT THROUGH THE VIDEO AND YOU SAID THINGS ABOUT

04:07PM 1 THERANOS; RIGHT?

04:07PM 2 A. CORRECT.

04:07PM 3 Q. AND BEFORE YOU DID THAT, DID ANYBODY SHOW YOU ANY OF THE

04:07PM 4 DOCUMENTS I JUST SHOWED YOU?

04:07PM 5 A. NO.

04:07PM 6 Q. NO ONE SHOWED YOU THE EMAILS?

04:07PM 7 A. NO.

04:07PM 8 Q. NO ONE SHOWED YOU THE TEXT MESSAGES?

04:08PM 9 A. NO.

04:08PM 10 Q. NO ONE ASKED YOU QUESTIONS ABOUT YOUR LAB RESULTS, THE

04:08PM 11 ONES I SHOWED YOU, COMPARED TO THE EMAILS THAT WERE GOING ON

04:08PM 12 INSIDE THE FOUR WALLS OF THERANOS?

04:08PM 13 A. CORRECT.

04:08PM 14 Q. NO ONE DID THAT BEFORE THEY ASKED YOU TO SIT FOR THAT

04:08PM 15 VIDEO?

04:08PM 16 A. NO.

04:08PM 17 Q. THANK YOU.

04:08PM 18 NO FURTHER QUESTIONS.

04:08PM 19 THE COURT: REDIRECT?

04:08PM 20 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

04:08PM 21 MAY I PROCEED?

04:08PM 22 THE COURT: YES.

04:08PM 23 ///

04:08PM 24 ///

04:08PM 25 ///

REDIRECT EXAMINATION

BY MR. COOPERSMITH:

Q. MS. WOOTEN, LET'S START OFF WHERE MR. SCHENK LEFT OFF.

DO YOU RECALL MAKING A VIDEO OR APPEARING IN A VIDEO FOR THERANOS?

A. I DO RECALL.

Q. AND DID YOU GET PAID ANYTHING FOR THAT?

A. I DID NOT.

Q. MS. WOOTEN -- DR. WOOTEN, MR. SCHENK ASKED YOU SOME QUESTIONS AND HE SHOWED YOU SOME DOCUMENTS WITH SOME INTERNAL EMAILS OF THERANOS.

DO YOU REMEMBER THAT A FEW MINUTES AGO?

A. YES.

Q. AND YOU TESTIFIED THAT YOU HAD NEVER SEEN THOSE THINGS BEFORE; CORRECT?

A. CORRECT.

Q. AND YOU DIDN'T WORK AT THERANOS; RIGHT?

A. CORRECT.

Q. AND YOU TESTIFIED THAT SOME OF THOSE THINGS MIGHT GIVE YOU PAUSE; IS THAT FAIR?

A. CORRECT.

Q. OKAY. BUT WERE YOU COMFORTABLE SENDING YOUR PATIENTS TO THERANOS DURING THE TIME PERIOD THAT YOU SENT THEM THERE?

A. I WAS.

Q. AND, IN FACT, NOW WE KNOW THAT YOU ACTUALLY STARTED

04:09PM 1 SENDING PATIENTS OF THERANOS AS EARLY AS 2014; IS THAT RIGHT?

04:09PM 2 A. YES.

04:09PM 3 Q. AND WHY WERE YOU COMFORTABLE SENDING YOUR PATIENTS TO
04:09PM 4 THERANOS?

04:09PM 5 MR. SCHENK: OBJECTION. 702.

04:09PM 6 THE COURT: SHE CAN ANSWER THE QUESTION.

04:09PM 7 YOU CAN ANSWER THAT QUESTION.

04:09PM 8 THE WITNESS: CAN YOU REPEAT THE QUESTION. I'M
04:09PM 9 SORRY.

04:09PM 10 BY MR. COOPERSMITH:

04:09PM 11 Q. WHY WERE YOU COMFORTABLE SENDING YOUR PATIENTS TO THERANOS
04:09PM 12 ALL OF THAT TIME?

04:09PM 13 A. DURING THE WHOLE TIME I SENT THEM?

04:09PM 14 Q. YEAH. WHY WERE YOU COMFORTABLE?

04:09PM 15 A. BECAUSE I REVIEWED THE LABS. I TEST QUITE OFTEN. I DO A
04:10PM 16 COMPARATIVE WITH OTHER LABS, AND THE RESULTS THAT I WAS GETTING
04:10PM 17 FOR MY PATIENTS, THEY WERE -- WHAT IS THE WORD I'M LOOKING FOR?
04:10PM 18 -- THEY WERE CONSISTENT WITH OTHER LABS AS WELL.

04:10PM 19 Q. OKAY. DR. WOOTEN, I WANT TO SHOW YOU AN EXHIBIT THAT IS
04:10PM 20 PREVIOUSLY IN EVIDENCE.

04:10PM 21 IF WE CAN PULL UP EXHIBIT 13876.

04:10PM 22 OKAY. DID I EVER SHOW YOU THIS DOCUMENT BEFORE?

04:10PM 23 A. NO.

04:10PM 24 Q. OKAY. SO MR. SCHENK SHOWED YOU A DOCUMENT WHERE
04:10PM 25 ADAM ROSENDORFF, A LAB DIRECTOR, WAS TALKING ABOUT STOPPING HCG

04:10PM 1 TESTING ON A CERTAIN INSTRUMENT.

04:10PM 2 DO YOU RECALL THAT?

04:10PM 3 A. YES.

04:10PM 4 Q. OKAY. AND DID MR. SCHENK SHOW YOU THIS EMAIL ON DIRECT --
04:10PM 5 ON CROSS RATHER?

04:10PM 6 A. NO.

04:11PM 7 Q. AND DID MR. SCHENK EVER ASK YOU ANY QUESTIONS DURING HIS
04:11PM 8 CROSS-EXAMINATION, ABOUT DR. ROSENDORFF KNOWING FULL WELL THAT
04:11PM 9 THE HCG WAS GOING BACK ON THE EDISON?

04:11PM 10 MR. SCHENK: OBJECTION. LEADING.

04:11PM 11 THE COURT: WHY DON'T YOU REPHRASE THAT QUESTION.

04:11PM 12 BY MR. COOPERSMITH:

04:11PM 13 Q. DID MR. SCHENK, ON HIS CROSS-EXAMINATION, TELL YOU
04:11PM 14 ANYTHING ABOUT DR. ROSENDORFF APPROVING OR KNOWING ABOUT HCG
04:11PM 15 GOING BACK ON THE EDISON DEVICE AFTER HE INITIALLY SAID TO
04:11PM 16 STOP?

04:11PM 17 A. I'M SORRY. COULD YOU REPEAT THE QUESTION.

04:11PM 18 Q. WERE YOU ASKED THOSE QUESTIONS DURING CROSS?

04:11PM 19 A. NO.

04:11PM 20 Q. OKAY. AND YOU SAID ON, I THINK ON CROSS THAT YOU THOUGHT
04:11PM 21 THAT YOU WOULD EXPECT A LAB AT THERANOS TO FIX ANY PROBLEMS?

04:11PM 22 A. CORRECT.

04:11PM 23 Q. AND DO YOU HAVE ANY KNOWLEDGE WHETHER THEY WERE DOING THAT
04:11PM 24 OR NOT DOING THAT?

04:11PM 25 A. NO.

04:11PM 1 Q. AND WAS -- WERE THE EMAILS THAT MR. SCHENK WAS SHOWING
04:12PM 2 YOU, THE OTHER DOCUMENTS, CONSISTENT WITH YOUR OWN EXPERIENCE
04:12PM 3 AT THERANOS?
04:12PM 4 A. NO.
04:12PM 5 Q. BECAUSE WAS YOUR OWN EXPERIENCE AT THERANOS GOOD OR BAD?
04:12PM 6 A. IT WAS GOOD.
04:12PM 7 Q. MR. SCHENK SHOWED YOU SOME DOCUMENTS IN THE EXHIBIT, AND
04:12PM 8 IF YOU COULD TURN IN THE GOVERNMENT'S BINDER TO TAB 5861.
04:12PM 9 TAKE A LOOK AT PAGES 1 AND 12.
04:12PM 10 A. YES.
04:12PM 11 Q. DO YOU KNOW WHO SHAWN WOOTEN IS?
04:12PM 12 A. YES, HE'S MY BROTHER.
04:12PM 13 Q. IS THAT YOUR BROTHER?
04:12PM 14 A. YES.
04:12PM 15 Q. DID YOU HAVE YOUR BROTHER GO AND TAKE LABS AT THERANOS?
04:13PM 16 A. I DID.
04:13PM 17 Q. MORE THAN ONCE?
04:13PM 18 A. I BELIEVE SO, YES.
04:13PM 19 Q. MR. SCHENK ASKED YOU SOME QUESTIONS ABOUT HCG, AND YOU
04:13PM 20 TESTIFIED ON DIRECT THAT YOU YOURSELF HAD HCG TESTS AT
04:13PM 21 THERANOS; IS THAT RIGHT?
04:13PM 22 A. YES.
04:13PM 23 Q. AND YOU HAD TWO DIFFERENT TESTS AT THERANOS?
04:13PM 24 A. CORRECT.
04:13PM 25 Q. DID YOU HAVE ANY EXPERIENCE -- BAD EXPERIENCES OR ISSUES

04:13PM 1 WITH THOSE HCG TESTS?

04:13PM 2 A. NO, I DID NOT.

04:13PM 3 Q. MR. SCHENK ASKED YOU SOME QUESTIONS ABOUT SOME RESULTS

04:13PM 4 THAT YOU GOT THAT WERE VOIDED.

04:13PM 5 A. YES.

04:13PM 6 Q. AND IF A LAB HAD MADE A MISTAKE IN ANY WAY, WOULD YOU

04:13PM 7 EXPECT THEM TO DO THAT?

04:13PM 8 A. YES.

04:13PM 9 Q. AND IS THERANOS THE ONLY LAB THAT EVER DID THAT?

04:13PM 10 A. NO.

04:13PM 11 MR. SCHENK: OBJECTION. 401.

04:13PM 12 THE COURT: SUSTAINED. THE ANSWER IS STRICKEN,

04:13PM 13 LADIES AND GENTLEMEN.

04:13PM 14 BY MR. COOPERSMITH:

04:13PM 15 Q. WHEN YOU GOT SOME VOIDED RESULTS FROM THERANOS, WHAT WAS

04:14PM 16 YOUR REACTION TO THAT?

04:14PM 17 A. I WOULD DISREGARD THE TEST.

04:14PM 18 Q. RIGHT. BUT DID YOU CARE THAT THERANOS WAS VOIDING TESTS

04:14PM 19 OR NOT? DID IT MATTER TO YOU?

04:14PM 20 MR. SCHENK: OBJECTION. RELEVANCE.

04:14PM 21 THE COURT: IN RELATION TO HER PRACTICE?

04:14PM 22 MR. COOPERSMITH: YES, YOUR HONOR.

04:14PM 23 THE COURT: YOU CAN ANSWER THE QUESTION IN RELATION

04:14PM 24 TO YOUR PRACTICE.

04:14PM 25 THE WITNESS: SURE. CAN YOU ASK THE QUESTION AGAIN.

04:14PM 1 BY MR. COOPERSMITH:

04:14PM 2 Q. SURE.

04:14PM 3 IN RELATION TO YOUR PRACTICE AS A NATUROPATHIC PHYSICIAN,
04:14PM 4 WHEN YOU GOT THESE VOIDED RESULTS FROM THERANOS, DID YOU CARE?

04:14PM 5 A. OH, NO.

04:14PM 6 Q. AND WHY NOT?

04:14PM 7 A. BECAUSE I HAVE AN ONGOING TREND OF MY PATIENT'S LABS AND
04:14PM 8 IN SYMPTOMOLOGY, AND I MONITOR MY PATIENTS VERY CLOSELY.

04:14PM 9 SO WHEN I SEE AN OUTLIER, I DON'T DIAGNOSE JUST BASED ON
04:14PM 10 THAT ONE OUTLIER.

04:14PM 11 Q. OKAY. AND WERE THE, THE FACT THAT YOU GOT SOME VOIDED
04:15PM 12 RESULTS, DID THAT CHANGE YOUR VIEW OF YOUR EXPERIENCE WITH
04:15PM 13 THERANOS WHEN YOU GOT THOSE?

04:15PM 14 A. NO.

04:15PM 15 Q. AND ARE YOU -- DID YOU TESTIFY TODAY BASED ON YOUR OWN
04:15PM 16 EXPERIENCE WITH THERANOS? DID YOU TESTIFY BASED ON YOUR OWN
04:15PM 17 EXPERIENCE WITH THERANOS?

04:15PM 18 A. OH, BOTH.

04:15PM 19 Q. WHEN YOU SAY BOTH?

04:15PM 20 A. LIKE MY OWN EXPERIENCE AND THEN THE EXPERIENCE MY PATIENTS
04:15PM 21 HAD.

04:15PM 22 Q. OKAY. AND THAT'S THE BASIS OF YOUR KNOWLEDGE, YOUR OWN
04:15PM 23 EXPERIENCE AND THEN YOUR PATIENT'S AS WELL; CORRECT?

04:15PM 24 A. CORRECT.

04:15PM 25 Q. AND THEN THE THINGS THAT MR. SCHENK SHOWED YOU, THOSE WERE

04:15PM 1 OUTSIDE OF YOUR WORLD, SO TO SPEAK; RIGHT?

04:15PM 2 A. CORRECT.

04:15PM 3 Q. AND SO IN WHAT YOU KNEW, DID THERANOS -- WERE YOU WILLING

04:15PM 4 TO KEEP SENDING PATIENTS TO THERANOS?

04:15PM 5 A. CORRECT.

04:15PM 6 Q. AND IF YOU HAD RECEIVED SOME INFORMATION THAT THERANOS WAS

04:15PM 7 HAVING A PROBLEM WITH ONE TEST OR THE OTHER OVER TIME, WOULD

04:15PM 8 YOU HAVE DECIDED TO JUST NOT SEND PATIENTS THERE ANYMORE?

04:15PM 9 A. NOT TO ORDER THAT TEST.

04:16PM 10 Q. OKAY. WELL, WHAT WOULD YOU HAVE NEEDED, MORE INFORMATION?

04:16PM 11 A. YES.

04:16PM 12 Q. AND WHAT MORE INFORMATION WOULD YOU HAVE WANTED?

04:16PM 13 A. DID THEY GET THE TEST RESULT, WAS THERE AN ISSUE WITH IT,

04:16PM 14 DID IT AFFECT THE RESULTS THAT THEY WERE GETTING.

04:16PM 15 Q. AND WOULD YOU WANT TO KNOW THE TOTAL NUMBER OF TESTS THAT

04:16PM 16 THERANOS WAS CONDUCTING ON THAT PARTICULAR TEST?

04:16PM 17 WOULD YOU WANT TO KNOW THE TOTAL NUMBER OF TESTS AND WHAT

04:16PM 18 PERCENTAGE OF THE PROBLEM -- WHAT PERCENTAGE OF THE TESTS WERE

04:16PM 19 PROBLEMATIC?

04:16PM 20 A. CORRECT.

04:16PM 21 Q. OKAY. MR. SCHENK SHOWED YOU A TEXT MESSAGE?

04:16PM 22 A. YES.

04:16PM 23 Q. HAD YOU EVER SEEN THAT BEFORE?

04:16PM 24 A. NO.

04:16PM 25 Q. DO YOU KNOW WHAT MR. BALWANI WAS REFERRING TO?

04:16PM 1 A. NO.

04:16PM 2 Q. DO YOU KNOW WHAT ASPECT OF THE NORMANDY LAB AT THAT TIME

04:16PM 3 HE CONSIDERED TO BE A QUOTE, "DISASTER"?

04:16PM 4 A. NO.

04:16PM 5 Q. DO YOU HAVE ANY KNOWLEDGE ABOUT THAT AT ALL?

04:17PM 6 A. NOT AT ALL.

04:17PM 7 Q. DO YOU HAVE ANY CONTEXT AT ALL FOR ANY OF THE MATERIAL

04:17PM 8 THAT MR. SCHENK SHOWED YOU?

04:17PM 9 A. NO.

04:17PM 10 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

04:17PM 11 THE COURT: RECROSS?

04:17PM 12 **RECROSS-EXAMINATION**

04:17PM 13 BY MR. SCHENK:

04:17PM 14 Q. HI, DR. WOOTEN. I JUST WANT TO FOLLOW UP ON ONE AREA.

04:17PM 15 MR. COOPERSMITH ASKED YOU ABOUT A FAMILY MEMBER THAT YOU

04:17PM 16 ALSO SENT TO THERANOS?

04:17PM 17 A. YES, I DID.

04:17PM 18 Q. THAT FAMILY MEMBER HAD VOIDED TESTS AS WELL; IS THAT

04:17PM 19 RIGHT?

04:17PM 20 A. CAN YOU POINT OUT.

04:17PM 21 Q. YEAH, I WOULD BE HAPPY TO.

04:17PM 22 YOU CAN START ON PAGE 2. DO YOU SEE A VOIDED -- A GROUP

04:17PM 23 OF VOIDED TESTS ON PAGE 2?

04:17PM 24 A. CORRECT.

04:18PM 25 Q. DO YOU SEE A GROUP OF -- OH, I'M SORRY.

04:18PM 1 DO YOU SEE ONE MORE VOIDED TEST ON PAGE 7 FOR A FAMILY
04:18PM 2 MEMBER?
04:18PM 3 A. CORRECT.
04:18PM 4 Q. DO YOU SEE ANOTHER ONE ON PAGE 12 FOR A FAMILY MEMBER?
04:18PM 5 A. YES.
04:18PM 6 Q. AND IF YOU'LL TURN TO PAGE 158.
04:18PM 7 DO YOU SEE EVEN YOURSELF HAD A VOIDED TEST FROM THERANOS?
04:18PM 8 A. YES.
04:19PM 9 Q. THANK YOU.
04:19PM 10 NO FURTHER QUESTIONS.
04:19PM 11 THE COURT: ANYTHING FURTHER?
04:19PM 12 MR. COOPERSMITH: JUST BRIEFLY, YOUR HONOR.
04:19PM 13 **FURTHER REDIRECT EXAMINATION**
04:19PM 14 BY MR. COOPERSMITH:
04:19PM 15 Q. DR. WOOTEN, MR. SCHENK JUST ASKED YOU ABOUT SOME VOIDED
04:19PM 16 TESTS?
04:19PM 17 A. YEAH.
04:19PM 18 Q. AND WE'VE DISCUSSED THAT TOPIC ALREADY. RIGHT?
04:19PM 19 A. RIGHT.
04:19PM 20 Q. BUT MY QUESTION TO YOU IS, WHEN YOU GOT THE VOIDED TEST,
04:19PM 21 DID YOU LOOK AT THE ORIGINAL TEST AS WELL?
04:19PM 22 MR. SCHENK: OBJECTION. BEYOND THE SCOPE.
04:19PM 23 THE COURT: YOU CAN ANSWER THAT QUESTION.
04:19PM 24 THE WITNESS: OKAY. CAN YOU REPEAT THE QUESTION.
04:19PM 25 BY MR. COOPERSMITH:

04:19PM 1 Q. SURE.

04:19PM 2 WHEN YOU GOT THE VOIDED TEST, DID YOU ALSO LOOK AT THE

04:19PM 3 ORIGINAL TEST?

04:19PM 4 A. THE ORIGINAL TEST.

04:19PM 5 Q. THAT THERANOS CONDUCTED AT THE TIME THAT THE PATIENT, BE

04:19PM 6 IT A FAMILY MEMBER, FIRST VISITED THERANOS?

04:20PM 7 A. I WANT TO MAKE SURE THAT YOU'RE TALKING ABOUT THE

04:20PM 8 ORIGINAL --

04:20PM 9 Q. OKAY. LET ME ASK A SIMILAR BUT HOPEFULLY BETTER QUESTION.

04:20PM 10 A. YEAH.

04:20PM 11 Q. SO WHEN YOU GOT A TEST RESULT FROM THERANOS THAT THEY SAID

04:20PM 12 SHOULD BE VOIDED, FIRST OF ALL, DID YOU KNOW WHY THERANOS WAS

04:20PM 13 VOIDING --

04:20PM 14 MR. SCHENK: OBJECTION. BEYOND THE SCOPE.

04:20PM 15 THE COURT: YOU'RE GETTING BEYOND THE SCOPE.

04:20PM 16 WHY DON'T YOU ASK ANOTHER QUESTION.

04:20PM 17 MR. COOPERSMITH: SURE, YOUR HONOR.

04:20PM 18 Q. AND DID YOU -- AT THE TIME -- THE VOIDED TEST, RIGHT, WHEN

04:20PM 19 YOU GET A VOIDED TEST, DOES THAT MEAN THAT THERE WAS A TEST AT

04:20PM 20 SOME PREVIOUS TIME?

04:20PM 21 IN OTHER WORDS, LIKE, IF -- FOR THERANOS TO SEND YOU A

04:20PM 22 NOTICE THAT SOMETHING IS BEING VOIDED, DOES THAT MEAN THAT

04:20PM 23 THERE WAS A TEST AT SOME PREVIOUS TIME BEFORE THAT NOTICE?

04:20PM 24 A. I THINK IT'S SAYING THAT IT WAS VOIDED THROUGH THE DRAW --

04:20PM 25 THE DAY OF THE DRAW.

04:20PM 1 Q. OKAY. I SEE.

04:20PM 2 A. UH-HUH.

04:20PM 3 Q. AND WAS THAT ALARMING TO YOU IN ANY WAY?

04:20PM 4 A. ALARMING THAT IT WAS VOIDED?

04:20PM 5 Q. YEP.

04:20PM 6 A. NO.

04:20PM 7 Q. OKAY. AND IF THERANOS WAS STILL AROUND TODAY, BASED ON

04:21PM 8 YOUR OWN EXPERIENCE, WOULD YOU SEND PATIENTS THERE?

04:21PM 9 MR. SCHENK: OBJECTION. BEYOND THE SCOPE.

04:21PM 10 THE COURT: SUSTAINED. SUSTAINED.

04:21PM 11 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

04:21PM 12 THE COURT: ANYTHING FURTHER?

04:21PM 13 MR. SCHENK: NO, YOUR HONOR.

04:21PM 14 THE COURT: MAY THIS WITNESS BE EXCUSED?

04:21PM 15 MR. COOPERSMITH: YES, YOUR HONOR.

04:21PM 16 MR. SCHENK: YES, YOUR HONOR.

04:21PM 17 THE COURT: ALL RIGHT. THANK YOU, DOCTOR.

04:21PM 18 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE OUR BREAK NOW.

04:21PM 19 I APOLOGIZE. I THOUGHT WE WOULD BREAK EARLY, BUT WE EXTENDED

04:21PM 20 THROUGH THE AFTERNOON.

04:21PM 21 THANK YOU FOR YOUR PATIENCE. I WANTED TO FINISH THIS LAST

04:21PM 22 WITNESS'S TESTIMONY, SO I APPRECIATE YOUR ACCOMMODATION.

04:21PM 23 WE WILL BE IN RECESS.

04:21PM 24 I THINK WE HAVE A LONG BREAK. WE'RE NOT DUE TO RETURN

04:21PM 25 UNTIL NEXT FRIDAY, WHICH IS -- WHAT DATE IS THAT?

04:22PM 1 THE CLERK: 27TH, YOUR HONOR.

04:22PM 2 THE COURT: MAY 27TH. THIS IS A VERY LONG BREAK.

04:22PM 3 SO IT'S EVER IMPORTANT NOW FOR YOU DURING THIS BREAK TO

04:22PM 4 NOT, NOT DISCUSS THIS CASE WITH ANYONE, NOT TO DO ANY

04:22PM 5 INDEPENDENT RESEARCH, READ, LISTEN TO OR DISCUSS ANYTHING ABOUT

04:22PM 6 THIS CASE AND TO PLEASE AVOID AS BEST YOU CAN ANY INFORMATION

04:22PM 7 THAT MAY COME TO YOUR ATTENTION.

04:22PM 8 IF YOU SEE SOMETHING ON A TELEVISION OR HEAR SOMETHING,

04:22PM 9 TURN IT OFF, TURN AWAY.

04:22PM 10 I WILL, ON MAY 27TH, ASK YOU AGAIN WHETHER YOU'VE BEEN

04:22PM 11 SUCCESSFUL IN CONTINUING TO AVOID LEARNING ANYTHING ABOUT THIS

04:22PM 12 CASE.

04:22PM 13 WE WILL GIVE YOU, I THINK WE HAVE PROVIDED YOU WITH SOME

04:22PM 14 TEST KITS AGAIN. WE HAVEN'T DONE THAT YET?

04:22PM 15 OKAY. YOU'LL GET THOSE.

04:22PM 16 DO YOU HAVE THOSE, MS. ROBINSON?

04:22PM 17 THE CLERK: YES, I DO.

04:22PM 18 THE COURT: GREAT. YOU'LL GET THOSE WHEN YOU LEAVE

04:22PM 19 TODAY.

04:22PM 20 WE'LL ALSO PROVIDE YOU WITH THE CDC GUIDANCE WEB PAGE HARD

04:23PM 21 COPY THAT YOU CAN REFERENCE.

04:23PM 22 I'D ASK YOU TO KEEP IN CONTACT WITH MS. ROBINSON NEXT WEEK

04:23PM 23 AS TO IF THERE'S ANY CHANGE IN YOUR HEALTH CONDITIONS, PLEASE

04:23PM 24 ALERT HER AND LET US KNOW THAT AS WELL.

04:23PM 25 OTHER THAN THAT, PLEASE STAY HEALTHY AND ENJOY. I THINK

04:23PM 1 WE HAVE SOME GOOD WEATHER COMING UP. ENJOY NEXT WEEK.

04:23PM 2 I'M SURE YOUR EMPLOYERS WILL BE HAPPY TO SEE YOU AGAIN FOR

04:23PM 3 A BIT, AND WE WELCOME YOU REACQUAINTING YOURSELF WITH ALL OF

04:23PM 4 THOSE OTHER THINGS.

04:23PM 5 SO HAVE A GOOD BREAK. WE'LL SEE YOU NEXT FRIDAY. THAT'S

04:23PM 6 GOING TO BE AT 9:00 A.M., 9:00 A.M., FOLKS.

04:24PM 7 (JURY OUT AT 4:24 P.M.)

04:24PM 8 THE COURT: THANK YOU. PLEASE BE SEATED.

04:24PM 9 THE RECORD SHOULD REFLECT OUR JURY HAS LEFT FOR THE DAY.

04:24PM 10 SO, COUNSEL, WE CAN -- WE HAVE ADJUSTED OUR SCHEDULE FOR

04:24PM 11 MONDAY.

04:24PM 12 I SHOULD TELL YOU WE HAVE A SENTENCING AT 10:30 AM AND

04:24PM 13 THEN ANOTHER MATTER ON AT 1:00 O'CLOCK.

04:24PM 14 I THINK WE CAN FIT OUR CONVERSATION ABOUT THE PENDING

04:24PM 15 MOTION IN PERHAPS THAT MORNING IF WE START AT 8:30. I THINK WE

04:24PM 16 COULD AT LEAST GET SOME THINGS DONE, AND THEN IF WE NEEDED TO,

04:24PM 17 WE'LL TAKE A BREAK AND COME BACK IN THAT INTERIM BETWEEN THE

04:25PM 18 CONCLUSION OF THE SENTENCING MATTER AND THE 1:00 P.M. START.

04:25PM 19 SO LET'S DO THAT. LET'S SEE IF WE CAN HAVE SOME

04:25PM 20 DISCUSSION MONDAY.

04:25PM 21 I THINK THE TIME FOR THE REST OF THE WEEK, UNFORTUNATELY,

04:25PM 22 IS NOT AVAILABLE.

04:25PM 23 OKAY. AGAIN, IF -- I'LL RECEIVE THE GOVERNMENT'S REPLY

04:25PM 24 6:00 P.M. SUNDAY, AND I DON'T NEED ANYTHING ELSE FROM THE

04:25PM 25 DEFENSE ON THAT. WE'LL HAVE THEN A MOTION, AN OPPOSITION, AND

04:25PM 1 A REPLY, AND THAT SHOULD BE SUFFICIENT.

04:25PM 2 AND I SAY 6:00 P.M. I WELCOME RECEIVING IT ANY EARLIER.

04:25PM 3 ALL RIGHT. ANYTHING FURTHER BEFORE WE BREAK?

04:25PM 4 MR. COOPERSMITH: YOUR HONOR, JUST ON THAT

04:25PM 5 SCHEDULING ISSUE.

04:25PM 6 SO 8:30 A.M. ON MONDAY I THINK THE COURT SAID?

04:25PM 7 THE COURT: RIGHT.

04:25PM 8 MR. COOPERSMITH: AND I TOLD THE COURT EARLIER THAT

04:25PM 9 WE HAD -- I HAD AN APPOINTMENT AT 9:45.

04:26PM 10 IF I'M ABLE TO MOVE THAT, WHICH NOW THAT I SEE THE COURT'S

04:26PM 11 JAMMED SCHEDULE, I WILL ATTEMPT THAT, MAYBE I'LL JUST LET

04:26PM 12 MS. ROBINSON KNOW, AND WE WOULDN'T HAVE TO TAKE A BREAK IF WE

04:26PM 13 NEEDED MORE TIME AFTER THE 9:45.

04:26PM 14 IN OTHER WORDS, I THINK THE COURT SAID WE WOULD COME BACK

04:26PM 15 LATER IN THE AFTERNOON. BUT IF I'M ABLE TO MOVE THAT 9:45,

04:26PM 16 COULD THE COURT SORT OF CONTINUE AS LONG AS NECESSARY UNTIL THE

04:26PM 17 MATTER YOU HAVE AT 10:00, 10:30?

04:26PM 18 THE COURT: YOU KNOW, I HAVE TO CONFESS, THAT WAS MY

04:26PM 19 INTENT.

04:26PM 20 MR. COOPERSMITH: I SEE.

04:26PM 21 THE COURT: I THOUGHT WE WOULD JUST GO FORWARD. I

04:26PM 22 APOLOGIZE. I REMEMBER YOU SAID YOU HAD A CONFLICT. BUT I

04:26PM 23 THOUGHT WE WOULD GO 8:30 TO 10:30.

04:26PM 24 MR. COOPERSMITH: I KNOW I'M GOING TO HAVE A

04:26PM 25 CONFLICT, YOUR HONOR.

04:26PM 1 THE COURT: I APOLOGIZE.

04:26PM 2 SO -- WELL, WE'LL SEE WHAT WE CAN DO.

04:26PM 3 MR. COOPERSMITH: NO. I UNDERSTAND THE SCHEDULE.

04:26PM 4 THANK YOU.

04:26PM 5 THE COURT: THANK YOU. HAVE GOOD A WEEKEND. THANK

04:26PM 6 YOU.

04:26PM 7 (COURT ADJOURNED AT 4:26 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: MAY 20, 2022